THE LEGAL HERITAGE OF THE TAMILS

NATIONAL SEMINAR PAPERS

(29, 30-6 & 1-7-1994)

25822

உலகத் தமிழாராய்ச்சி நிறுவனம்
International Institute of Tamil Studies

Courtesy : INDIAN OVERSEAS BANK & TAMIL UNIVERSITY

Dr. S. Muthukumaran

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SHARING A WORD

The International Institute of Tamil Studies, constituted in 1968, during the II World Tamil Conference, was registered as a society in 1970, and began its fulfledged functioning in the present campus from 1972.

Annual Seminars were conducted from 1976 onwards. In 1977 a master plan to conduct Threeday National Seminars centering on the Heritage of the Tamils was taken up and a series of such seminars were successfully helo during the past two decades. They were :

(1) Cultural Heritage of the Tamils (1978)

(2) Literary Heritage of the Tamils (1978)

(3) Language and Grammer - Heritage of the Tamils (1979)

(4) Art and Architectural Heritage of the Tamils (1980)

(5) Historical Heritage of the Tamils (1981)

(6) Philosophical Heritage of the Tamils (1983)

(7) Siddha Medical Heritage of the Tamils (1984)

(8) Temple Arts - Heritage of the Tamils (1985)

(9) Education and Vocation - Heritage of the Tamils (1986)

(10) Social Heritage of the Tamils (1991) and

(11) Economic Heritage of the Tamils (1993)

The present seminar, the 12th one in the series is on the Legal Heritage of the Tamils (1994).

The Legal System is an integral part of any civilized society with its own indigenous cultural developments. 'The Law of Nature' imbibes in man "The Law of Life". Every aspect of development and every stage of change towards the better, brings in more and more laws, for the systematic progress and smooth running of men the day-to-day affairs, whether simple or complex, small or big. Some laws may be personal and private while others may be more broad and universal.

The Heritage of the Tamils is quite ancient and multidimensional. The literary, archaeological and oral (folk-lore) sources help much in knowing the different cultural facts. The earlier documents, which are

also monuments, may be undiluted and unpolluted. But most of these are unknown to and unstudied by most of the native Tamils, and even the learned. So an attempt to delve deep into the available corpus and bring up pearls and gems, becomes a necessity.

This cannot be done by a single person or an individual body. Many hands, hard working and many minds, deeply interested, seems a must. The efflorescence of such effort-with deep insight, had brought out many earlier volumes on the Heritage of the Tamils. A further step has been covered by this present venture. This has thrown open new paths into the realms of the Tamil Legal World.

Permission to conduct such a seminar was granted by our Chairman, Hon'ble Minister for Education, Prof.K.Ponnuswamy, M.Sc.,B.L., in October 1993 itself. We acknowledge it with heart-felt thanks.

In my endeavour to fix up the right topics and spot the right persons, I am identified to three eminent personalities: Justice J.Kanakaraj, Dr(Mrs) Nagabooshanam and Thiru.T.N. Vallinayagam. My heart swells with gratitude towards them.

Our Secretary, Thiru S.P.Elangovan, I.A.S., showed keen interest in the Institute's venture, and with much concern, suggested and invited on behalf of the Institute Thiru.T.N. Singaravelu, Rtd. Judge, Madras High Court, to be the Chief Guest and to deliver the key-note address. Our heart-felt thanks to both.

Our contributors have come from two different spheres, the academic and the legal. With much preoccupations, they have found enough time to comply with our request. A flown bloomed in our heart, each time an 'acceptance' was received; A sash of green was added every time an 'abstract' became concrete; a glow of gold sparkled, when the "file of 'papers'" dwelled, 'article' by 'article'. We thank all, who have thus added 'colours' to our 'feathers'.

Mere words of thanks are not enough for the benevolence of the authorities of the Indian Overseas Bank, Mount Road, Madras - 2, who have contributed towards the gift of Conference Bags and Stationery to the delegates and invitees.

We are greatful to the Vice Chancellor, Dr.Avvai.D.Natarajan and the governing body of the Tamil University, Tanjore, for willingly and voluntarily consenting to bear a share of our Seminar expenditure.

The Chandelier adding light and love to the conference hall is a *contribution of ...... sh!.* Hats off to the Chevalier.

20 Much labour has gone into the preparation of the seminar as a *whole. Programming, inviting, contacting, corresponding, meeting,* speaking, conscenting, disagreeing...". Fingers have keyed; eyes have proof-read; hands have xeroxed; arms have served...!! Thanks. Thanks. Thanks.

M-Ann Proposes
Authority Permits
Almighty Perpectuates

With *regad, respect, reverence*

S & F
Yours
A.T.
D-in-C

OUR CONTRIBUTORS

1. Thiru Abdul Kalam
Advocate
High Court of Madras
Madras - 600 104.

2. Thiru S. Ameerudeen
Advocate
P.O.Box No. 1
63, Lemaire Street,
Karaikal - 609 602.

3. Dr. Annie Thomas
Associate Professor &
Director-in-Charge
International Institute of
Tamil Studies
Madras - 600 113.

4. Dr.K.P.Aravanan
Prof. of Tamil
Central University
Pondicherry, 605 014.

5. Dr.V. Balambal
Reader in History
University of Madras
Madras - 600 005.

6. Dr.K.V. Balasubramanian
Associate Professor
Literature Dept.,
Tamil University
Tanjavur - 613 005.

7. Dr.R. Balasubramanian
Lecturer in Tamil
Alagappa University,
Karaikudi - 623 003.

8. Dr.T. Chandrakumar
Associate Professor
Dept. of Sculpture
Tamil University
Thanjavur - 613 005.

9. Dr.B. Cheran
Child Specialist,
16, Jayammal St.,
Ayyavu Colony,
Amanchikarai,
Madras - 600 029.

10. Thiru.C.Chinnasamy
Senior Advocate
63, 3rd Main Road
Gandhinagar,
Madras - 600 020.

11. Dr.K.Chockalingam
Prof & Head
Dept. of Criminology
University of Madras
Madras - 600 005.

12. Thiru K. Damodaran
Deputy Director
State Dept. of Archaeology,
Madras - 600 113.

13. Dr.Justice David
Annoussamy
President
State Consumer Disputes
Redressal Commission
46, Goubert Avenue,
Pondicherry.

14. Dr.G.Deivanayagam
Head, Dept of Architecture
Tamil University
Thanjavur - 613 005.

15. Thiru K. Ezhil
Advocate
28, Krishna Street,
T.Nagar,
Madras - 600 017.

16. Thiru.C.M.Ganapathy
Librarian
State Dept. of Archaeology,
Madras - 600 113.

17. Dr.N. Ghadigachalam
Senior Research Fellow
International Institute of
Tamil Studies
Madras - 600 113.

18. Thiru.R.Gandhi
Senior Advocate
22, Law Chambers
High Court Buildings
Madras - 600 104.

19. Selvi.C.V. Geetha
S.S. Lecturer in Tamil
Govt. College
Chittur
Palghat - 678 104.

20. Thiru R. Jothivanan
Lecturer in Tamil
130, Boopathi Nagar
Arcot - 632 503.

21. Dr.S.Kannan
Lecturer in Tamil
D.B. Jain College
Turaipakkam
Madras - 600 096.

22. Thiru M.Karpagavinayagam
Advocate
145, Law Chambers
High Court Buildings
Madras - 600 104.

23. Dr.R.Kasirajan
Reader
Dept. of Tamil Studies
Madurai Kamaraj University,
Madurai - 625 021.

24. Dr.M.Kothandaraman
Reader in Tamil
Correspondence Course
University oi Madras
Madras - 600 005.

25. Dr.K.P.Krishna Shetty
Advocate,
162, New Law Chambers
High Court Buildings
Madras - 600 104.

26. Major Dr.C.K. Mahadevan
Prof & Head
Dept. of Comparative Literature
Madurai Kamaraj University,
Madurai - 625 021.

27. Dr.K.A. Manikumar
Reader in History
Manonmaniam Sundaranar
University
Tirunelveli - 627 009.

28. Thiru N. Manohar
Senior Lecturer
Dept. of International and
Constitutional Law
University of Madras - 600 005.

29. Tmt. M. Marxia Gandhi
Asst. Superintending Epigraphist
State Dept of Archaeology
Madras - 600 113.

30. Dr. D. Murthy
Lecturer in Tamil
Alligarh Muslim University,
Aligarh.

31. Thiru.P.L. Murugan
Law Secretary (Rtd.)
Plot No. M/7
19th Avenue
Ashok Nagar,
Madras - 600 083.

32. Thiru.V.Murugan
Notary
Govt.of Tamil Nadu.
22, Sivarathri Mada Street,
Thiruvannamalai - 606 601.

33. Dr.T.Murugarathanam
Professor
Dept.of Tamil Studies
Madurai Kamaraj University,
Madurai - 625 021.

34. Dr.(Mrs)P.Nagabooshanam
Reader
Dept. of Legal Studies,
University of Madras,
Madras - 5.

35. Dr.R.Nagaswamy
Rtd. Director, Archaeology,
Director, Brahadisvara Project,
I.G.N.C.A;
Director, Epigraphy
Programme,
EFED, Centre for indology,
Pondicherry.

36. Dr.A. Padmavathy
Epigraphist,
State Dept.of Archaeology,
Madras - 600 113.

37. Dr.Padmanabhan Thambi
Lecturer (Sr.G)
Oriental Research Institute &
Manuscripts Library
Kerala University,
Kariyavattom - 695 581.

38. Tmt.V.Ponmani
S.S. Lecturer
Dr.A.G. Law College,
Madras - 600 104.

39. Thiru V.P. Purushotham
Advocate
135, Additional Law Chambers,
High Court Buildings
Madras - 600 104.

40. Dr. Radha Chellappan
Reader in Tamil
Bharathidasan University
Trichirapalli - 620 024.

41. Thiru.K.A. Rajaram
S.G. Lectures & Head
Dept. of Tamil
Govt. Victoria College
Palghat - 678001

42. Thiru M.Rajendran
District Supply Officer
Collectorate
Thanjavur - 613 001.

43. Dr.Raju Ponndurai
Lecturer
Dept. of Architecture
Tamil University
Thanjavur - 613 001.

44. Dr.C. Ramakrishnan
Judge (Rtd)
16, Karaneeswar Koil Street,
Mylapore, Madras - 600 004.

45. Thiru.S.Ramalingam
Chief Judge (Rtd)
President of Aliance Francaise
Pondicherry - 605 001.

46. Dr. Ranganayaki Mahapatra
Prof & Head, Tamil Dept.,
Calcutta University,
Calcutta.

47. Thiru. M.Ravindran
Senior Advocate,
President, Bar Association,
High Court,
Madras - 600 104.

48. Thiru.S.Shantakumar
Research Scholar
Dept. of Legal Studies,
University of Madras,
Madras - 600 005.

49. Dr.S.Shanmuga Sundaram
Head of the Dept. of Tamil
St. Joseph's College,
Bangalore - 560 001.

50. Dr.S.Sivakami
Senior Research Fellow
International Institute of
Tamil Studies
Madras - 600 113.

51. Thiru.M.Srinivasan
Lecturer
Dept.of Criminology
University of Madras,
Madras - 600 005.

52. Dr.N.Subbu Reddiar,
Emeritus Professor
Dept. of Tamil Literature
University of Madras
Madras - 600 005.

53. Dr. S.V. Subramanian
Director
Ulakat Tamil Kalvi Iyakkam
Tamil Nadu
Tirunelveli - 627 808.

54. Thiru.T.N. Vallinayagam
Advocate
192, Thambu Chetty St.,
Madras - 600 001.

55. Dr. K.K.A. Venkatachari
Director
Akshardham Centre for Applied Research in Social Harmony,
J Road, Sector 20,
Gandhinagar - 382 020.
Gujarat.

உலகத் தமிழாராய்ச்சி நிறுவனம்

INTERNATIONAL INSTITUTE OF TAMIL STUDIES

CPT CAMPUS, TTTI POST, MADRAS 600 113.

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National Seminar on the

'LEGAL HERITAGE OF THE TAMILS'

தமிழரின் சட்ட மரபுச்செல்வம்

29, 30 - 06 & 01.07.1994

You are cordially invited to the three day National Seminar on the Legal Heritage of the Tamils to be inaugurated by the Chairman of the Institute

Hon'ble Minister for Education,

Prof. K. Ponnusamy, M.Sc., B.L.

at the Institute on 29-06-94 at 10.30 a.m..

The Secretary, Tamil Development-Culture

Thiru S.P.Ilangovan, I.A.S.

will preside over the function.

Thiru T.N. Singaravelu, Rtd.Judge,

will be the Chief Guest and deliver the key note Address.

வருக ! வருக !!

Director i/c

SESSION 2

30.06.'94 **10.30 a.m. - 1.30 p.m.**

Chair Person **Dr.C Ramakrishnan**

Development of Constitutional law in the Age of the Great Tiruvalluvar in Tamilnadu

Ethics Vs Law in Tirukkural
Dr. T. Murugarathanam

Arthasastra and Tirukkural - A comparison in Legal Principles **Dr. V. Balambal**

Manusmrithi and Tamil Law
Dr. K.P. Aravanan

Litigation **Thiru M. Rajendran**

Crime and Punishment as gleaned from a Pandiya Inscription **Tmt. M. Marxia Gandhi**

Custom : A source of Law for administration of Justice
Thiru S. Shanthakumar

Land and Law **Thiru P.L. Murugan**

Crime and Punishment as revealed through Folk Ballads **Dr.S. Shanmuga Sundaram**

Jails and Dungeons in Tamilnadu
Dr. G. Deivanayagam

SESSION 3

30.06.'94 **2.00 p.m. - 5.30 p.m.**

Chair Person **Thiru. T.N. Vallinayagam**

Trial, Evidence, Witness

Primitive Law of the Tamils as found in Tolkappiyam and Cilappatikaram
Dr.S.V. Subramanian

Court of justice in Cankam Literature **Dr. K.V. Balasubramanian**

King as the Legal head/Royal Judge
Dr. Radha Chellappan

Crime and Punishment in Akam Poems **Dr. N. Subbu Reddiar**

A view on Crimes and Punishments in Cankam Literature
Thiru R. Jothivanan

INTERNATIONAL INSTITUTE OF TAMIL STUDIES

T.T.T.I. Post, Tharamani, Madras 600 113.

National Seminar on the Legal Heritage of the Tamils

Inaugural Programme

29.6.'94	**10.30 a.m. - 12.00 Noon**
Chair Person	**Thiru S.P. Ilangovan I.A.S** Secretary to Govt. Tamil Development - Culture Dept.
Invocation to Tamil	
Welcome	Director i/c
Chair Person's address	
Inaugural address	**Prof. K. Ponnusamy, M.Sc., B.L.** Hon'ble Minister for Education Govt. Of Tamilnadu.
Keynote address	**Thiru T.N. Singaravelu** Retd. Judge High Court of Madras
Vote of Thanks	Dr.N. Gadigachalam
National Anthem	

PLENARY SESSION

29.06.'94 **12.00 Noon - 1.30 p.m.**

Chair Person **Thiru. S. Ramalingam**
Tamil Customary Law

Consumerism and Law **Dr.(Mrs.) P. Nagabooshanam**

Personal Law **Thiru. Abul Kalam**

Trial & Punishment in Ancient Tamil Country
Thiru S. Ameerudeen

SESSION I

29.6.'94 **2.00 p.m. - 5.30 p.m.**

Chair Person **Thiru C. Chinnasamy**
Customary Law

Tamil Courts and the Dharma Sastras as gleaned from Chola Inscriptions - A Study
Dr. R. Nagaswamy

Criminal Law **M.Karpagavinayagam**

Medicine and Law **Dr. B. Cheran**

Jurisprudence **Tmt. V. Ponmani**

Human rights in Tamilnadu from the age of Cankam down to 16th C.A.D.
Thiru M. Ravindran

Land and Law, with spl.ref.to the concept of property **Thiru N. Manohar**

Legal administration of the Cholas
Dr. A. Padmavathy

Judicial System in the Villages of Tamilnadu during the Chola Period (1000 - 1300 A.D.)
Thiru K.Damodaran.

Land and Law during Chola Rule
Dr. K. A. Manikumar

Legal aspects in Perungathai **Dr. R. Kasirajan**

Legal System as revealed in Tiruvilaiyatal Puranams
Dr. S. Sivakami

Crime and Punishment in Puranas
Dr. R. Balasubramanian

Maratha Judicial System
Dr. K.K.A. Venkakatachari

SESSION 4

1-7-'94 **10.30 a.m. - 1.30 p.m.**

Chair Person **Dr. David Annoussamy**

Legal System in vogue during the Nayanmar Period
Selvi. C.V. Geetha

Criminology **Dr. K. Chockalingam &**
Thiru M. Srinivasan

Legal Administration (Folklore)
Dr. M. Kothandaraman

Legal Systems in Minor Litt. with special reference to Pallu **Dr. N. Gadigachalam**

Indian Land System - Ancient and Medieval with special reference to Bengal
Dr. Ranganayaki Mahapatra

Judicial Court halls of Tamilnadu : Historical and Architectural perspective **Dr. Raju Poundurai**

Concept of Justice among the Tamils, based upon Mythology and Art **Dr. T. Chandrakumar**

Litigation **Thiru K. Ezhil**

Role of Evidence in Judicial Proceedings through Tamil Literature
Dr. D. Murthy

Law and Justice in Ancient Tamil Land
Thiru. C.M. Ganapathy

SESSION 5

01.07.'94 **2.00 p.m. 4.45 p.m.**

Chair Person **Thiru R. Gandhi**
Accident and Relief

Legal Administraion in Travancore
Dr.Padmanabhan Thambi

Village headman's role as legal head
Thiru. V. Murugan

Imprisonment as punishment
Dr. S. Kannan

Concept of Sovereignty in Tirukkural
Thiru K.A. Rajaram

Jurisprudence **Dr. K. D. Krishna Shetty**

System of Election **Thiru V. P. Purushotham**

Mutilation as Punishment
Dr. Annie Thomas

VALEDICTORY

01.07.'94 **4.45 p.m. - 6.00 p.m.**

Chair Person **Dr. Pon. Kothandaraman**
Professor and Head, Dept. of Tamil Literature, Madras University

Welcome Director IIC

Chair Person's Address

Report on the Seminar **Dr. N. Gadigachalam**

Views of Participants

Valedictory Address **Dr. Nadanakasinathan**
Director, Archaeology, Madras

Vote of thanks **Dr. S. Sivakami**

National Anthem

நன்றி! வணக்கம்!

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Dr.K.V. Balasubramanian

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25. System of Election in Ancient Tamilnadu
Thiru.V.P. Purushotham

26. Mutilation as Punishment
Dr.Annie Thomas

1 CONSUMERISM AND LAW

Dr. P. Nagabooshanam

Very recently there was a write up in the leading dailies which revealed that Tamil is the ancient language and Tamil Culture is of the richest and oldest heritage of Indian. Sanskrit came along with Aryans and mixing up of the language of origin plus the new language resulted in multiplicity and diversity of languages, culture etc.

Population was much less, land was vast, fertile soil untiring, sincere and honest people rendeing their services with noble heart, with pious and fervour. As it is observed by an American jurist, "that the Government is the best which governs the least" - ancient Tamil Kingdom could be found. The main concern was justice, triumph martyredum, fine arts etc. In short the Sangam Age literature gives the details of Agam and Puram life of the ancient Tamils.

Though concept of consumerism is from time immemorial the need for consumer protection legislation is felt only in the recent past. The law is still in the take off stage in India. The Consumer Protection Act has come into effect in 1986. It is neither exhaustive nor exclusive of other Acts which are in existence already. The Consumer Protection Act is not in derogation of any other Law. The term any other law refers to various laws for the protection of Consumers. To mention a few: Indian Penal Code 1860, Indian Contract Act 1872, Protection of Law to Consumers under the Code of Civil Procedure 1908, sale of Goods Act 1930, Drugs and Cosmetic Act 1940, Prevention of Food Adultration Act 1955, Protection of Civil Rights Act 1955, Essential Commodities ACt 1955, Monopolies and Restrictive Trade Practices Act 1969, Standards of Weights and Measures Act 1976, Consumer Protection under the Law of Torts etc. It is quite obvious that all these enactment came into effect from the British period. The Indian Legal and Constitutional History reveals that the Ancient Law in India is Gentoo Law - Hindu Law until foreign invasion.

Hindu Jurisprudence is a fine texture of law, religion and dharma and karma all interwoven nicely. Dharmasastras prescribed the privileges, duties and obligations of a man according to the stage of his life - to the social order he belongs to. eg.,

> "ஈன்று புறந்தருதல் என்தலைக் கடனே
> சான்றோனாக்குதல் தந்தைக்குக் கடனே
> வேல் வடித்துக் கொடுத்தல் கொல்லற்குக் கடனே
> நன்னடை நல்கல் வேந்தற்குக் கடனே
> களிறு எறிந்து பெயர்தல் காளைக்குக் கடனே" (புறம்)

Hindu jurisprudence is duty oriented jurisprudence. In Ancient India, Hinduism was the only religion for a long time. More so as far as Tamil Nadu is concerned. This is self evident from the division of land mainly into four viz., Kurinji, Mullai, Marutham and Neydal. The people, their main function their leader and the deity all will show the main or predominent religion which happened to be Hinduism. Later came Samana or Avuna or Jainism and then Buddihism etc. As far as the law is concerned they form part of Hindu law today.

In Ancient India joint family happened to be nucleus in each village, communal head, village head man, religious leaders and other leaders were keeping vigilance over the social order and punish the wrong doer with find or ex-communication etc. Some time with Prayaschitha etc.

People were stanch believers of Karma Theory. "வினை விதைத்தவன் வினை யறுப்பான்". Initially it was barter system and later came payment with gold coin - "பொற்காசுகள்". There was no temptation on the part of the consumer and he purchased only what he wants and not whatever was available or advertised. The sign boards in the form of flags in the shops only announced what was available in their shops and not tall claims, misleadings, etc. Every consumerable item was the gift of the nature and not artificially made.

The social order was divided into four main groups and the duty has been assigned to each to them. According to the Dharma Sashtras "குல விச்சை கல்லாமல் பாகம்படும்", "குலத்தளவேயாகுமாம் குணம்" - the Vysyas were mainly concerned with business, the Khsatriyas were the rulers, the Brahmanas were prohits and advisers to the society right from the ruler and interpreters of Sastras etc. The fourth division has been entrusted with manual labour.

Vysyas carried on trade or business both at the national and international level. They dealt with the best and precious items from their place to other places and brought and sold the best they got from other places. According to the quality and preciousness of the items they went in search of the customers mostly. The price was fixed according to the capacity and rare quality of item.

The most thriving business and most complicated and problematic too is business in food and treatment by doctors. The competition goes on in these two areas in the form of getting Five Star Restaurants and Five Star Hospitals, where as the faith in those days was to offer them free of cost. eg. பாணாற்றுப்படை, Payment for services can be seen in Thiruvilaiyadal Puranam, "பிட்டுக்கு மண் சுமந்த படலம்".

The legal heritage of the Tamils can be derived from Sangam Literature to begin with. The trade and business, transaction those days is understandable by the following references: The name of the poets:

2 1. காவிரிப்பூம் பட்டினத்துப் பொன் வாணிகனார் மகனார் நப்பூதனார்.
2. மதுரை அறுவை வாணிகன் வெண்ணாகனார்
3. தங்கால் பொற்கொல்ல்ன் வெண்ணாகனார்.
4. உறையூர் மருத்துவன் தாமோதரனார்.
5. கச்சிப்பேட்டு பெருந்தச்சனார், இளந்தச்சனார், பெருங் கொற்றனார், சாத்தன், கொல்லன், வெண்ணாகனார் etc.

Madurai Kanchi, one among the Pathupattu gives us glimpse of trading in Sangam age. Description of Market - Nallangadi and Allangadi.[1]

The King is the one who rules without fear or favour, safeguards the interest of his subjects without any bias. His balance of justice renders justice equally, and in the best possible manner. He is supported by highly principled members of his Court.[2]

The trade transaction is described in the best way in the lines from 500 to 520. The description in detail goes on like this about evening or night market *(அல்லங்காடி)* as well.

In short the day and night market were selling every best available consumable goods in a just and fair manner. The Court of Justice consisting of highly principled members were rendering justice in case any rare occurance takes place; the King above all, was ruling without any bias, whatsover.

Pattinappalai makes it very clear that there was no need for any Consumer Protection Act as it is understood in the present day context.

The people were afraid of blemishes. They always tell the truth and they treat other goods as their own, and compare them.

They never take more nor give less - they are the business people of ancient Thondi.

Pattinappali stands evidence for flourishing export and import business too in the ancient Tamil Nadu. Particularly this part is about Cholas.

"நீரினின்று நிலத்தேற்றவு
நிலத்தினின்று நீர்ப் பரப்பவு
மளந்தறியாப் பல பண்டம்
வரம் பறியாமை வந்தீண்டி
யருங்கடிப் பெருங்காப்பின்
வலியுடை வல்லணங்கினோன்
புலி பொறித்துப் புறம் போக்கி
மதி நிறைந்த மலி பண்டம்
பொதி மூடைப் போரேறி..............."[1]

Thirukkural insists upon fair trade practice:

"வாணிகம் செய்வார்க்கு வாணிகம் பேணிப்
பிறவும் தம்போற் செயின்" (120)

The true merchandize of merchants is to guard and do buy the things of others as they buy their own.

In chapter 76 he lays down the rule for way of accumulating wealth.

"அறன்ஈனும் இன்பமும் ஈனும் திறனறிந்து
தீதின்றி வந்த பொருள்"

The wealth acquired with a knowledge of the proper means and without foul practices will yield virtue and happiness.

However Epics period give us much more details on vanigam and the business people's life. Silappadigaram and Manimegalai have ordinary members of the society as Thalaivan and Thalaivi rather than the royal family members which used to be the earlier practice.

Adirai's husband Saduvan went with business people who went to vanigam for earning.

Silappadigaram give ample testimony for the trade and business in ancient Tamil Nadu. Kannagi daughter of Perungudi Vanigan, Kovalan son of blemishless praise worthy Masathu Vanigan etc. The description of Maruvoorpakkam and its market place, the Sathukka-poodam and Nalangadi Boodam keeping vigilance and punishing the erring persons etc. reveal the fair trade practice in Chola Kingdom.

The concept of Consumer Protection comes where the goldsmith makes Kovalan believe that the golden anklet of Kannagi he wanted to sell can be procured only by the King for his queen and makes him wait in one place and takes it to the King trying to pass it on as the one given to him for menting earlier. After stealing the anklet of the queen he tries to establish that Kovalan has stolen it. The punishment for the supposed theft also happened to be very severe - Severing the head and confiscating the goods. The King sets right the balance of justice and makes ruling by givng up his life.

It can be derived from this that the need for consumer Protection is realised in Silappadigaram where the unfair trade practice resulted in so many calamities.

However, if we go a little away from Tamil heritage we get ample testomony in Manudarma Shastras and Kaudilya's arthashastra as to what is fair trade practice and what is the punishment for unfair trade practice.

The present Act to protect consumer from unfair trade practice etc. provides for Consumer Disputes Redressal Agencies - District Forums, State Consumer Disputes Redressal Commission and National Consumer Disputes Redressal Commission.

3 From Tamil Literature Sangam Age onwards the equivalent can be found in the following arrangement: Communal arrangements, Panchayats, *ஐம்பெருங்குழு, எண்பேராயம், அறங்கூறவையம்* finally the King who can be approached instantly by ringing the bell hung for this purpose if anything goes wrong. The trade practice was based on honesty as the best policy. Therefore we can presume that there was no need for Consumer Protection Act on those days as today.

"வண்மை இல்லை ஓர் வறுமை இன்மையால்
திண்மை இல்லை நேர் செறுநர் இன்மையால்
உண்மை இல்லை பொய் உறை இலாமையால் (கம்ப. பால)

"கள்வார் இலாமைப் பொருள் காவலும் இல்லை;
யாதும் கொள்வார் இலாமைப் கொடுப்பாரும் இல்லை
மாதோ"

It is unthinkable in the present day to have like this. However there may be still places were the people do not know the concept fo Consumer Protection and the need for the legislation. But we have joined the fast moving world with our slow motion and have been drawn into the fast flowing stream of GATT Dunkle Agreement etc.

Therefore it is most urgently needed today to have the consumer protected from known and unknown hazards of unfair trade practice in the national as well as international transactions. Some of the ways and means to protect the Consumer could be by quality control, price fixation, quantity, durability, fair deal in service sectors etc. Above all, individual and collective accountability should be attached to all transaction in all deeds.

The Ancient Tamils have shown the way for this by following the policy of Consumer consciousness. The same can be achieved today if one simply follows them.

"தமவும் பிறவும் ஒப்ப நாடிக்
கொள்வதூவும் மிகை கொளாது
கொடுப்பதூஉம் குறை கொடாது"

"வாணிகம் செய்வார்க்கு வாணிகம் பேணிப்
பிறவும் தம்போற் செயின்".

★ ★ ★ ★ ★

2. JURISPRUDENCE

Mrs. V. Ponmani

Jurisprudence means knowledge of law. The Roman jurist Ulepian definend it as, "observation of things human and divine, the knowledge of the just and unjust." As per Salmond it is the science of the first principles of the civil law. As far as civilization is concerned we have ample evidence that Dravidian Tamil Civilization is the ancient in this part of the world. The Indus valley civilization, some of the archealogical findings in this continent reveal that the rich tradition and civilization of Tamil heritage is proved by this.

However, law is *anorganic thing* which grows along with the society. Hence Jurisprudence can be said to be design of social engineering concerned with social relations-norms and regulations prescribed by the Dharma Sastras, rulers etc. The Dharma Sastras and rulers prescribed from time to time as per the needs of the hour does and donts.

If we analyse the contribution of Jurisprudence in Tamil heritage we will find the equivalence in the literary evidene. The characteristics of ancient law is Ethics or morals, duty of an individual towards the family, the society, the king etc, at each and every stage as well as towards the community to which he belongs to. The Hindu Jurisprudence which happen to be the main law of ancient times is duty oriented, so we find the duty of a student, a man, a woman, a ruler etc. The Kula dharma achara etc have been prescribed in the Sangam Age onwards.

This treatise aims at bringing out the equivalence in Tamil to present day concept of Jurisprudence.

1. STATE

The best state according to Tamil Literature is one of Self-sufficient.

"நாடென்ப நாடா வளத்தன நாடல்ல
நாட வளந்தரு நாடு" (குறள் 739)

"நாடா கொன்றோ காடா கொன்றோ
அவலா கொன்றோ மிசையா கொன்றோ
எவ்வழி நல்லவராடவர்
அவ்வழி நல்லை வாழிய நிலனே" (புறம். 187)

" வரப்புயர நீர் உயரும்
நீர் உயர நெல் உயரும்

நெல் உயர குடி உயரும்
குடி உயர கோல் உயரும்
கோல் உயர கோன் உயரும்" (ஔவை)

2. SOVEREIGNTY

"அரசன எவ்வழி அவ்வழி குடிகள்" (பழமொழி)

"படைகுடி கூழஅமைச்சு நட்பரண் ஆறும்
உடையான் அரசருள் ஏறு" (குறள். 381)

"இயற்றலும் ஈட்டலும் காத்தலும் காத்த
வகுத்தலும் வல்ல தரசு" (குறள். 385)

3. Theory of Law

There are three characteristics for law.

i) Ethics as law

ii) Law as the command of the Sovereign

iii) Law as the practice of the court.

i) ETHICS AS LAW

This is called as moral law or natural law. Aristotle, Plato, Justinian, Blackstone, Cicero, Aquinas were supported this kind of laws. Moral law insists that do good and avoid bad or evil activities in life. Thiruvalluvar pointed out as,

" அலலவை தேய அறம்பெருகும் நலலவை
நாடி இனிய சொலின் " (குறள். 96)

The longing for Justice means eternal longing happiness. This also stated as,

"அறத்தான் வருவதே இனபம் மறறெல்லாம்
புறதத புகழு மில" (குறள். 39)

The same moral thoughts have been quoted by

ஔவையாா in " ஆத்திசூடி - at very

first statement as " அறம் செய விரும்பு"

In உலக நீதி, Ulaganathar stated as "தருமத்தை ஒரு நாளும் மறக்க வேணடாம்"

Social order regulates the behaviour of man in a very satisfactory manner to all men, so that all men find this happiness in it. Justice is social happiness. i e to satisfy the needs of others, to give food, shelter, cloths etc , whichever is possible. In Tamil literature Sathanar pointed

out that,

"அறம் எனப்படுவது யாது எனக் கேட்பின்
மறவாது இது கேண், மன்னுயிர்க் கெல்லாம்
உண்டியும், உடையும், உறையுளும், அல்லது
கண்டது இல்...." (மணிமேகலை காதை 25 வரி 228 - 232)

There is no doubt Jurisprudence is related to Tamil moral principles.

ii) LAW AS THE COMMAND OF THE SOVEREIGN

Every law is a species of command which obliges a person or persons to a course of conduct. Law is the product of the Sovereign. If there is no sovereign there is no law. "Law is not right alone or might alone but the perfect union of the two. It is justice speaking to man by the voice of the state.``[1]

The law is the command of the Sovereign. The same words used in ``ஆத்திசூடி":

"சக்கர நெறி நில்" means
"அரசு ஆணைகளுக்கு கட்டுப்பட்டு வாழ்"

The duties of the Sovereign is stated by Thiruvalluvar as

"குடிபுறங் காத்தோம்பிக் குற்றங் கடிதல்
வடுவன்று வேந்தன் தொழில் " (குறள். 549)

"ஓர்ந்து கண்ணோடாது இறைபுரிந்து யார்மாட்டும்
தேர்ந்து செய்தலஃதே முறை" " (குறள். 541)

Maine stated that " Law has reached the footing of custom, it is rather a habit. Austin resolves every law into a command of the law giver, an obligation imposed thereby on the citizen, and a sanction threatened in the event of disobedience.``[2]

iii) LAW AS THE PRACTICE OF THE COURT

Administration of Justice means, "the maintenance of right within a political community by means of the physical force of the state. ``[3] Law is the aggregate of rules and regulations recognised and acted on by courts of justice.

In ancient days crown was the authority to decide cases relating to society. So the duty of the crown was to give impartial, certain, uniform judgements. The importance of the crown was stated by Thiruvalluvar as,

"முறைசெய்து காப்பாற்றும் மன்னவன் மக்கட்கு
இறையென்று வைக்கப் படும் "

Ilangovadigal mentioned the administration of justice as follows:

"அரசியல் பிழைத்தோர்க்கறம் கூற்றாவதூஉம்
உரைசால் பத்தினியை உயர்ந்தோ ரேத்தலும்

ஊழ்வினை உருத்து வந்தூட்டலும்"

"பொன் செய் கொல்லன் தன் சொல்கேட்ட
யானோ அரசன் யானே கள்வன்
மன்பதை காக்கும் தென் புலங்காவல்
என் முதல் பிழைத்தது கெடுக என் ஆயுள்
என மன்னவன் மயங்கி வீழ்ந்தனனே" (சிலப். 3118 - 3122)

The king maintained his justice (செங்கோன்மை) by realising the truth like Manuneethi Cholan has ordered to kill his son under the chariot, when the cow asked justice.

"வாயிற் கடைமணி நடுநா நடுங்க
ஆவின் கடைமணி உகுநீர் நெஞ்சுசுடத்தான்தன்
அரும் பெறல் புதல்வன் ஆழியின் மடித்தோன் "20

iv) INTERNATIONAL LAW

This law is consisted of customary and conventional rules related to civilised nations. To Holland, "there are only two factors viz (i)Public opinion and (ii) the force and opinion of the disputant rules possible. International Law may well be described as the vanishing point of jurisprudence"[4] For nationwide contact, we have a common law (Jus Gentium) to trade with other countries for earning economic wealth of our country. In Tamil Literature there was a statement:

" திரைகடலோடியும் திரவியம் தேடு ". (கொன்றை வேந்தன்)

International Law emphasises Diplomatic relationship between one country to another for the better understanding of the states. The word "தூது" is used in Tamil for the diplomatic relationship.

"அன்புடைமை ஆன்ற குடிப்பிறத்தல் வேந்தவாம்
பண்புடைமை தூதுரைப்பான் பண்பு" (குறள். 681)

means the qualification of an ambassador are affection for his relationship, a fitting birth, and the possession of attributes pleasing to royalty.

"அன்பறிவு ஆராய்ந்த சொல்வன்மை தூதுரைப்பார்க்கு
இன்றி யமையாத மூன்று" (குறள். 682)

That means, law to the sovereign, knowledge of his affairs and a discriminating power of speech before other Sovereigns, are the sine qua non qualifications of an ambassador.

5. CONSTITUTIONAL LAW

As "the body of rules governing the relation between the sovereign and the subjects and the different parts of the sovereign body."[5] It deals with the fundamental and far reaching principles governing the structure of the state. Art.45 stated that "the state shall endeavour to provide within a period of ten years from the commencement of the constitution,

for free and compulsory education for all children, until they complete the age of fourteen years. " The obligation of the state is to give free and compulsory education for children. The importance of education is mentioned in Tamil Literature as under.

"கற்க கசடற கற்பவை கற்றபின்
நிற்க அதற்குத் தக" (குறள். 391)

"கற்றவரை ஒரு நாளும் பழிக்க வேண்டாம்" (உலகநீதி)

"இளமையில் கல்" (ஔவை)

"எண்ணும் எழுத்தும் கண்ணெனத் தகும்" (கொன்றை வேந்தன்)

அரசியல்

"வினைவலியும் தன்வலியும் மாற்றான் வலியும்
துணைவலியும் தூக்கிச் செயல்" (குறள் 471)

"நாடோறும் நாடுக மன்னன் வினைசெய்வான்
கோடாமை கோடா துலகு" (குறள் 520)

"ஒற்றும் உரைசான்ற நூலும் இவையிரண்டும்
தெற்றென்க மன்னவன் கண்" (குறள் 581)

அமைச்சியல்

"தெரிதலும் தேர்ந்து செயலும் ஒருதலையாச்
சொல்லலும் வல்லது அமைச்சு" (குறள் 634)

"ஆற்றுபவர்க்கும் அரண் பொருள் அஞ்சித்தன்
போற்று பவர்க்கும் பொருள்" (குறள் 741)

குடியியல்

"அன்புடைமை ஆன்ற குடிப்பிறத்தல் இவ்விரண்டும்
பண்புடைமை என்னும் வழக்கு" (குறள் 992)

"ஆள்வினையும் ஆன்ற அறிவும் எனவிரண்டின்
நீள்வினையான் நீளும் குடி" (குறள் 1022)

6. PROPERTY LAW

Property right is called as ownership right. Ownership means control

over an object.

"அருளில்லார்க்கு அவ்வுலக மில்லை பொருளில்லார்க்கு
இவ்வுலகம் இல்லாகி யாங்கு (குறள் 247)

If all the rights over a thing were centred in one person, that person would be the owner of the thing. The property right is a guarantee to exclude other persons from the use or handling of the thing.

CONCLUSION

Law is not like a stagnant pool of water. It is like a running water. It is changed from time to time according to developing society. "Law is the body of knowledge and experience with the aid of which a large part of social engineering is carried on "[6] From the above analysis, we have proved the contribution of Jurisprudence in Tamil Heritage.

Foot Notes :

1. Salmond, Jurisprudence, p.55
2. Ancient Law, p.53
3. Hobbes, Leviathan, Ch.13
4. The Elements of Jurisprudence, p.392
5. Jurisprudence, p.19
6. Rocoe Pound, Interpretation of Legal History, p.156

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3 CUSTOMARY LAW

C. Chinnaswami

The origin of custom is a question that has been little studied until comparatively recent times. Prior to the birth of modern anthropology, the beginnings of the community were sought by abstract speculation and not by field investigation of primitive communities. Savigny in 1814 emphasized the necessity of historical study; Maine wrote brillinatly on primitive communities, being stirred by his knowledge of the East to undertake comparative studies. This stimulated English jurists to a more realistic study. What is amazing is that, although Maine wrote before modern anthropology was created, his work still remains fruitful. Further research has revealed errors both in his appreciation of Roman law and the Eastern communities, but the broad outlines of his contribution remain of real value.

Towards the end of the nineteenth century, anthropology became a field study and our knowledge of primitive man has greatly increased. In this century the work of malinowski and H.I. Hogbin has shown that the pacific provides a field for comparative study. The work of D.F. Thomson and T.G.H.Strehlow among the Australian aborigines is based on long residence with the tribes. We are still, however, only on the fringe of the problem. What has believed to punish, not actual breaches of obligation, but failure to reach a socially approved standard of performance. Collective religious ceremonies help to provide belief in abody of tradition and in the unity of the tribe. Sorcery is often used in an anti-social way, but it is also one of the weapons for enforcing the observance of customs. Supernatural sanctions are often feared by primitive man, but they are not automatic and sometimes a counter magic is available which is believed to avert the consequences of the breach of a tabu. This illustration shows that there is no spontaneous and slavish adherence to the rules of custom, as some writers have thought. The savage is occasionally desirous of escaping his obligations just as is civilized man.

Suicide cannot be called a legal sanction, but it is sometime the result of outraged public opinion. Malinowski relates that a youth who committed misconduct with a girl denied to him by the rules of exogamy, was so taunted in public for the incest that he put on festive attire and committed a ceremonial suicide by jumping from the top of a palm tree. In this case, in spite of the general horror of incest, public opinion had not been stirred till the youth's rival made accusation and aroused public indignation.

An interesting analysis is that of Llewellyn and Hoebel in dealing with the Cheyenne Indians. Their postulates are that we have three essential elements in any community: the group, the existence of divergent desires within the group, and claims made by some members against other or against the group. If the group is to remain a community, the resulting problems must be met. The authors rightly emphasize that the terms custom and mores are not accurate enough to deal with the problem. Firstly, even in a primitive community we soon reach a distinction between what is done and what ought to be done. Secondly, there is sometimes a conflict between the family, the band, the military society, and the tribe. Each may have its own norms which must somehow be reconciled with those of the group. It is not a mere conflict between the individual and society. Thirdly, the word custom sometimes lends a seeming solidity to practices which are still in the way of being established. The two main factors in the dynamics of a legal order, Llewellyn and Hoebel find to be drift and drive, the first an unconscious development, the second a conscious individual demand. It is the latter element that causes the growth of law, for this produces the problems which society must solve. The 'trouble spots' are the source of law, but we get a false view both of ancient and modern law if we concentrate exclusively upon them.

Custom is useful to the lawgiver and codifier in two ways. It provides the material out of which thye law can be fashioned - it is too great an intellectual effort to create law de novo. Psychologically, it is easier to secure reverence for a code if it claims to be based on customs immemorially observed and this is true even though historically the claim cannot be substantiated. There is inevitably a tendency to adopt the maxim 'whatever is is right' - what has been followed in the past is a safe guide for the future. Bracton and Beaumanoir used the buttress of custom when dealing with the difficulty felt as to the power of a single judge to lay down the law. From time to time individual claimants voice demands which either are not covered by existing rules or run counter to them. The crucial question is how those demands are dealt with in the community. If such a matter is dealt with in a way which establishes a new rule then a new community practice may be germinated.

Custom is not always based on abstract justice-the obvious example of slavery illustrates this. Savigny's view that custom springs from an inner sense of right cannot be substantiated. It is often asked whether conviction generates practice, or practice conviction. If we emphasize too much the first alternative, this suggests that the community logically faces its problems and devises self-consciously the best rules. This is a false picture - the growth of much custom is not the result of conscious thought, but of tentative practice. When a problem-arises-strife between

two members of the community- then an answer must be found: but tact, a sense of the merits, and an appreciation of the strength of each faction play a greater part than any desire to find a rule that is logically justifiable. But once a rule is adopted, practice generates conviction. To primitive man as to the child, what has been done is the thing that ought now to be done.

The mark which distinguishes custom in the legal sense from mere convention is the opinio necessitatis, the recognition that there is authority behind it. In the modern state the custom, if legally recognized, has behind it the court and an apparatus of coercion. In primitive communities we do not find authority necessarily organized in the institutional sense. We must ask, 'what is the ultimate power in the group to settle conflicts or to presecribe rules'? It may be the old men, the military group, the priests, or merely a general consensus of opinion. But the opinio necssitatis can come into existence only when the community in some way throws its force behind the particular rules. No exhaustive study exists of the psychological factors which create the opinio necessiatatis in the primitive community.

Custom in its early stages is somewhat vague-it can be made into an effective rule of law only if the practice is hardened and made définite. This can occur only by the slow work of the courts, as technical rules are fashioned out of the raw material afforded, or by legislation, since writing inevitably shapens the vague outlines of custom.

Custom is not necessarily immemorially old. All customs must have begun at some time and Azo regarded a custom as long if it was ten years old, very long if thirty years, and ancient if forty. Custom, therefore, is more flexible than is sometimes supposed.

The task of the law is so to adjust behaviour that the group can remain a group and can spend its energies on more vital matters than internal strife. But the more complex society becomes, the less effective is custom: the test of custom is continued observance and customs ex hypothesi cannot be suddenly created to meet a new problem. Again, the most effective way to prevent disputes is to lay down rules in advance-custom is useful for situations that have already occured, but cannot create a rule to deal with a future difficulty.

In Roman law we find little light. There are titles that deal with the topic, but they are very obscure. Nevertheless, there is sufficient discussion to reveal that custom did play a considerable part in the evolution of the law. It was even thought that custom could effectively abolish a statute. Julain is cited by the Digest as approving this view on the ground that it is immaterial whether the people expresses its will tacitly by conduct or by a formal statute. It is unlikely that Justinian

regarded this as applying to his own law. There are some traces in Scots law of the same theory, though it seems to be limited to statues passed prior to the Union with England.

The Sanskrit work for custom which is used by Manu and Yajnavalkya is SADACHARA or the usage of virtuous man. This term has been defined by Manu himself as "The custom handed down in regular succession from time immemorial among the 4 chief castes and the mixed races of the country. So, Sadachara or approved usage only means that it should not contrary to Dharma. No doubt, Gauthama says "the laws of countries, castes and families which are not opposed to the sacred records have also authorities. The Authors Vijnanesvara and Kulluka commenting respectively on yajnavalkya and Manu, state that the customs should not be repugnant to the vedas and smritis. On this point there is a difference between the religious and civil law in the smritis and the general requirement that usage should not be opposed to the Vedas in the Smritis is confined to the rules relating to religious observances and does not apply to the Rules of Civil Law, as to which the tests of Narada, Brahaspathi and Katyayana recognising the force and validity of customs, are decisive. All that vijnaneswara and Kulluka must have meant, is the custom should not be immoral or criminal or opposed to public policy, in which case, it will cease to be the conduct of virtuous man.

Fullest effect is given to custom both by Courts and by Legislation. The Judicial Committee in the judgement reported in the famous Ramnad case says "Under the Hindu System of law, clear proof of usage will outweigh the written text of the law". In fact, several Acts which provide for the administration of the law, dictate a similar adherent to usage unless it is contrary to justice, equity or good conscience or has been actually declared to be void. Customs are of various descriptions, Customs or castes, tribes and classes, local or territorial customs and customs of families. When family custom is established, general custom cannot be set up. There is no comprehensive digest of all local or tribal customs prevailing in different parts of India prepared and published under authority. Records of a limited scope are however available. In punjab and in some other states most valuable records of village and tribal customs relating to the succession to and dispossession of land have been collected under the authority of the settlement officers and these have been brought into relation with the judicial system by enactments that the entries contained in them should be presumed to be true. For instance, the Riwaji-i-am is a public record prepared by a Public record prepared by a Public officer in the discharge of his duties under Government rules and is admissible to prove the facts entered therein subject to rebuttal. The statements therein must be accepted even if unsupported by

instances, Manuals of customary law in accordance with the Riwaji-I-am *have been issued* by the *authorities for* each district and stand on much the same footing as the original itself.

References may also be made to the following works Steel's "Law of Castes and Tribes in the Dekhan" C.L.Thapper's "Punjab Customary Law; Bolster's "Customary Law of the Lahore district". Edgur Thurstan's "Castes and Tribes of Southern India". The District Manuals and Census *reports of the several States (then known as Provices) contain useful* information on the usages and customs. Nelson's Madura Manual, Logan's Malabar Manual, DDR. Maclean's "Manual of the administration *of the Madras Presidency*"; Riseley's "Tribes and Castes in Bengal"; Croke's "Tribes and Castes of the North Western Provinces and Dudh". In some parts of Northern India, particularly in the districts in the common punjab or adjacent to punjab, the strict rules of Mithashara (a branch of Hindu Law) as recognised by the School of Banaras have not been followed by some castes, *tribes and families of Hindu and customs* which are at variance with the law of the Mithakshara as recognised by that school have been for long consistently followed and acted upon and *when such customs are established, they and not the strict rules of* mithakshara with which they are at variance, are to be applied. Customary law governers agricultural communities of all castes and religions in Punjab. Such customs relate to a variety of subjects, as for instance, the widow's adoptions and the descent of land and interest in land; They are *to be found particularly amongst the agriculturists classes, but they are* also to be found amongst classes which are not agriculturists. The first question is as to the validity of customs differing from the General Hindu Law. The beginnings of law were in customs. Law and usage Act and our are connected upon each other. The belief in the property or the imperative nature of a particular course for conduct produces an *uniformity* of behaviour in following a particular course of conduct produces a belief that it is imperative or proper to do so. When from either cause or from both causes, a uniform and persistent usage as moulded the life and regulated the dealings of a particular class or a community, it becomes a custom which is a part of their personal law. Hence, where a special usage of succession was set up, the High Court of Madras said "what the law requires before an alleged custom, can receive the recognition of a *court and so, acquire legal force, is satisfactory proof of usage so* long and invariably acted upon in practice as to show tht it has be common consent, been submitted to as the established governing rule of a particular family caste, district or country and the course of pratice upon which the custom vests must not be left in doubt, but be proved with certainty.

As stated already, not only in India, but in several other countries also, custom and customary law play an important role. In England one

of the sources of English law in addition to Court decisions and Statutes is, 'custom'. Of course, its importance is very inferior to that of the first two. English law is not a customary law. But the general immemorial custom of the moral realm is theoretically the basis of a common law. Law in England before the elaboration of the common law was essentially customary and the common law borrowed many rules from the varied local customs formerly in force. But the process of building the common law itself was the fashioning of a judge-made law, based on reason which replaced the customary law of the Anglo-sexaon period. At the present time, the place of custom in English law is very small. It is denied any great importance because of the rule requiring that it be obligatory and 'immemorial', a statute of 1265, *still* in force, specified this condition by prescribing that immemorial custom was custom that existed in 1189. To tay proof of such great age- to the time of "legal memory" - is probably not required but in England a custom is not considered to be legally binding if it is established that it could not have existed as *early as* 1189. *Many different customs have also been sanctioned* by the Courts over the centuries, or taken up by statutes, and these rules have thus lost their original customary character to become legislative or judge-made rules. In these circumstances, the sphere in which custom may be considered as a truly living source of the present law in England, as in France, is very limited.

The requirement, however, that custom be "immorial" is only demanded of local custom and is not a feature of commercial or Mercantile custom. Such commercial and mercantile custom have been absorbed by the common law in the field or commercial law. Recent practices show that here again customs *occasionally* do appear, but their importance is limited, especially when a custom is absorbed by case-law; Naturally then it loses its customary character and becomes a judicial and legal rule. Even in the field of constitutitonal law, there are several aspects such as conventions that are nothing but custom and *dominates English political life. In England, customs plays the role* even in the field of Criminal law. For instance in various cases, custom obliges the Judge to make use of the jury. In the eyes of a French man, this kind of custom is law. An English man on the other hand would prefer to call it a usual practice.

There are other examples also. In the law of labour relations, the collective agreements concluded between Trade Unions and *Managements are not regarded* as matters of law; they are simply non-legal "gentlemen's agreements". Similarly the monopoly of questioning witnesses before the superior courts held by barristers is no more than a matter of simple practice, founded on custom, and not a strictly binding rule.

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Inter National Law customs plays an Important Role. Until recent times International law consisted for the most part of customary rules.

The material sources of International may be defined as actual materials from which an International law determines the rule applicable to given situation. These materials fall into five principal categories or forms :-

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i. custom

ii. treaty

iii. decisions of judicial or arbitral tribunals

iv. Juristic works

v. decisions or determinantions of the organs of International Institutions.

As a matter of fact until recent times International law consisted for the most part of Customary Rules. These rules had generally evolved after a long historical process culminating in their recognition by the international community. The preponderance of customary rule was diminished as a result of large number of law making treaties concluded since the middle of the last century and must progressively decline to negligible proportions in measure as the work of the International Law commission in codifying and restating customary rules produces results in treaties such as the Geneva Convention of April 29, 1958, on the High Seas and the Vienna Conventions of April 18, 1961 and of April 24, 1963, on Diplomatic Relations and Consular Relations respectively.

J.S.Starke speaks of the relation-ship between the term 'Custom' and the term 'usage' in the field of International law. The term Custom and Usage are often used interchangeably. Strictly speaking there is a clear technical distinction between the two. Usage represents the twilight stage of custom. Custom begins where usage ends. Usage is an international habit of action that has not yet got full legal attestation. Usage may be conflicting, custom must be unified and self consistent, Viner's Abridgement referring to custom in English law, has the matter in a nutshell.

'A custom in the intendnent of law, is such a usage as

hath obtained the force of a law".

A customary element has, as we have seen, been a feature of the rules of international law from antiquity to modern times. In Ancient Greece, the rules of war and peace sprang from the common usages observed by the Greek City States. These customary rules crystalised by a process of generalisation and unification of the various usages

separately observed by the each city republic. A similar process was observable among the small Italian States of the Middle Ages. When in the sixteenth and seventeenth centuries Europe became a complex of highly nationalised, independent territorial States, the process, was translated to a higher and more extensive plan. From the usages developed in the intercourse of modern European states there emerged the earliest rules of International law.

Customary rules crystallise from usage or practices which have evolved in approximately three sets of circumstances.

1. Diplomatic relations between States-Thus acts or declarations by statesman, opinion of the legal advisers to State Government, bilateral treaties and now press release of official statements by Government spokesmen may all constitute evidence of usage followed by States;

2. Practice of International organs etc.

4 CRIMINAL LAW

M.KARPAGAVINAYAGAM

The well developed legal system in criminal law is referred in detail in ancient Tamil literatures, legal institutions and the procedures prevailed then are also referred in the ancient literary works. The Tamil Nadu comprising of Chera. Chola and Pandiya kingdoms in ancient days had a glorious past. Then Thamizhagam was known for it's literary and cultural development and it was compared favourably with ancient civilisations of Greeks, Rome and Egypt. State of Society then was a well civilized one. There was a well developed legal system and a strong machinery to administer the same. These institutions were called as "ஐம்பெருங்குழு", "எண்பேராயம்" which assisted the King in the administration of justice.

From the Sangam period, the administration of justice in Criminal Law assumed more significance. More importance was given for running the administration by the rulers or the Ministers of the state. The justice administered in the Courts and the state of mind of the Presiding Officers of the Courts were compared to the Balance (Tharasu).

As per Madurai-Kanchi (*மதுரைக்காஞ்சி*), one of the works of "*பத்துப் பாட்டு*" "(Patthu Pattu), The courts which were situated in the City of Madurai, the Capital of Pandiyas, administered justice in the following manner.

"*செற்றமும் உவகையும் செய்யாது காத்து*
ஞெமன்கோல் அன்ன செம்மைத்தாகி
சிறந்த கொள்கை அறங்கூறவையம்"
"*செற்றம்* " means dislikes
"*உவகை*" means likes

The justice was compared to "*ஞெமன்கோல்*" (Balance).

In Thirukkural also one of the works of "*பதினெண்கீழ்க்கணக்கு*", it is mentioned as, "*சமன்செய்து சீர்தூக்கும் கோல் போல் அமைந்தொருபால் கோடாமை சான்றோர்க்கு அணி*". *சமன் செய்து சீர்தூக்கும் கோல்*" means the Balance.

In "*பட்டினப் பாலை*" also, in one of it's works, "*பத்துப்பாட்டு*", while referring the administration of justice in Kaveripoompattinam by Cholas, Justice is compared as "*நீள் நுகத்துப்பகல்போல*". "*நுகம்*" means yoke which is now called as Nugathadi (*நுகத்தடி*) and "*பகல்*" means the stand in the centre of Yoke.

In the city where the bullock cart moves in whichever angle, the bullocks alone move, but the stand in the centre of the yoke maintain the central always. This aspect is compared to the neutral and impartial

mind of the Judge, an essential feature of the administration of justice. There cannot be a better exposition of equanimity which is an indispensable necessity for the presiding Officers of the Courts.

Another Sangam literature, "கலித்தொகை" compares the judicial temperament to the Balance which will not fail in the following words:

ஓர்வுற்று ஒரு திறம் ஒல்காத
நேர்கோல் வலம்புரி நெஞ்சத்தவர்

"ஓர்வுற்று" means influenced by likes and dislikes. "ஒரு திறம் ஒல்காத நேர்கோல்" means an accurate Balance, i.e., the persons who are capable of rendering justice are not influenced by likes and dislikes and taking the correct decision and showing the correct weight as an accurate balance.

Our "திருக்குறள்" also speaks of the imperative necessity of doing justice in the following manner.

ஓர்ந்து கண்ணோடாது இறைபுரிந்து யார்மாட்டும்
தேர்ந்து செய்வதஃதே முறை

"ஓர்ந்து" means voluntarily.

"கண்ணோடாது" means not favouring persons with a motive. In other words, the even minded justice and impartial justice was to be rendered without the element of favouritism.

These ancient Tamil literature refer to the existence of an independent, impartial and neutral judiciary, administration of justice and the same is even worthy of emolation in the present day.

Sangam Literature speak of the approach of the Judges of those days as to how they decided the disputes without giving room for likes and dislikes. If one is swayed by dislikes, then the good dpoint disappears.

So, ultimately, justice fails. Therefore, Judges should not have dislikes or likes.

The following words are depicting the state of mind of the then Judges.

"காய்தல் உவத்தால் இன்றி ஒரு பொருட்களை
ஆய்தல் அறிவுடையார் கண்ணதே!
காய்வதன் கண் உற்றகுணம் தோன்றாதாகும்
உவப்பதன் கண் குற்றமும் தோன்றாக் கெடும்"

(கீழ்க்கணக்கு)

It means that things have to be looked into when brought to notice for justice without any likes or dislikes. If the likeness is evinced, the guilt will be suppressed and if aversion is evinced, the good quality will be suppressed. These lines set out the indispensable quality of Judges which is a dire need of the present day.

Justice is the legitimate end of the law. The peace alone was once considered to be end of law. As civilisation developed, the end of law was conceived to be security. Therefore, there could neither be peace nor security in a society where justice is not rendered to the people. In fact, the equity is the pillar of justice. It is founded on the great convention that all human beings are equal and they are entitled to equal treatment.

The history of this country is replete with such instances of equal treatment, even to animals and birds. The act of Chola Kind "Cibi Chakravarthy" who cut off his own flesh to appease the avaricious hungry eagle is an illustrious example of equal justice. But, the most significant and magnificient of them is the story of Manu Neethi Chola who firmly believed that the justice should be uniformly applied to all the lives It knew no exeption and the life of Manu Neethi Chola stands out for equal justice to everyone.

On the occasion of the 125th Anniversary of our High Court, the organisers of the function decided to place the statue of Manu Neethi Chola on a high pedestal at the entrance of the High Court not merely to show that once upon a time there was a good Judge in our land but also to draw the inspiration to meet the legitimate aspirations of the present day people.

Two messages are perennially flown from Manu Neethi Chola. (i) Author of Justice should remain open to all, even to creatures which cannot speak or to people who cannot write and to citizens who cannot pay and (ii) Manu Neethi Chola is an apostle of absolute Justice, Justice at any cost and he could not accept subterfuges, evasive solution suggested by his Ministers. The message by Manu Neethi Chola is that one should not get inhibited by the eventual consequences of one's act of justice on oneself. Justice will take care to heel the harm it causes.

The son of Chola King Manu, while driving his chariot in high speed at the Royal Street, run over a calf which died. The mother cow ran to the palace and rang the Bell of Justice. *(ஆராய்ச்சிமணி)*. The King, on seeing the suffering of the cow, decided to run over his Crown Prince under his chariot. His ministers tried their best to dissuade him. One of the ministers represented the facts of the case in such a way that there was no offence committed by the prince. A few lines depicting the facts of the case, as represented by the minister, from "Periyapuranam" manifest that the case was one in which the complaint should have been dismissed in limine and the Prince was to be discharged.

வளவ! நின் புதல்வன் ஆங்கோர் மணி
நெடுந்தேர் மேல் ஏறி அளவில் தேர்தானைசூழ
அரசுலாந் தெருவில் போங்கால் இளைய ஆன்
கன்று தேர்க்கால் இடைப்புகுந்து சிறந்ததாக

தளர்வுறும் இத்தாய் வந்து விளைத்தது
இத்தன்மை.

The accusation, as narrated by the minister, is that the prince was riding the chariot in the Royal Street which was exclusively reserved for the members of the Royal family. Further, the prince was going in the chariot with a umpteen number of bells attached to it ringing and causing more sound all the way. The ringing noise of all the bells of chariot should have been heard even at a long distance to the persons or animals to take precaution to move away from the path of the chariot. Not only there was a noise of bells from the chariot of the Prince, but also it was accompanied by a number of chariots with the bells causing more sound. The calls was run over not by the front wheel of the chariot. After the front wheel of the chariot had passed, the rear wheel run over the calf. Moreover, the complaint was given by the mother cow and so, it was biased and interested. According to the ministers, the complaint by the mother cow on the above alleged incident deserved to be summarily thrown out. The first argument put forth by the ministers was that the calf strayed in the street which was the Royal Park and the rear wheel only ran over the calf and so, the accident was without negligency of the prince. The second argument was that in any event that the said accused can be relieved by doing deeds mentioned in the scriptures.

"வந்த இப்பழியை மாற்றும் வகையினால்
மறை நால் வாய்மை அந்தணர் விதித்த வாற்றால்
ஆற்றுவது அறம்."

But, the Chola King rejected those arguments on the ground that by doing such deeds as mentioned in the scriptures for redeeming the sin, the suffereing of the cow could not be relieved.

"வழக்கன்று நீர்மொழிந்தால் மற்றது தான்
வலிப்பட்டு குழக்கன்றை இழந்தலறும்
கோவுறு நோய் மருந்தாமோ!
இழக்கின்றேன் மைந்தனை என்று எல்லீரும் சொல்லியவிச்
சழக்கின்று நானியந்தால் தருந்தான் சலியாதோ"

Manu Neethi Chola says that if such an ill-advice is followed, the justice will evidently suffer and that his only duty is to protect the subjects and render justice. Thus, he disregarded the advice of his ministers and awarded the punishment of killing his own son by running the chariot over him by the King himself, the father of the crown Prince.

Ultimately, the verdict of the king was one in favour of the cow and against his own son. He even suggested to inflict on himself the same sufferings undergone by the cow. The king was of the firm view that the confidence in the Courts and in the Rule of Law by the public should never get shaken as that would be the end of any civilised society. Thus, the memory of Manu Neethi Chola lives as the beacon light radiating the beams of Justice forever.

Even under section 304 IPC, now a days, the above said arguments are being administered in Courts and that an offender for having caused the death of the person due to the rash and negligent act cannot be convicted due to the fact that the act cannot be convicted due to the fact the act cannot be directly attributed to the negligence of the accused. The very same arguments are found available in the poem referred to in "Periyapuranam`` (பெரியபுராணம்). But, the difference is that in the present day criminal system, if the Judge is related to any of the parties or is having interest in the parties or if he is in any way personally concerned with the issues, the Judge should not sit and render justice in the said case. The reason being that the Justice is not only to be done but also seem to be done. The criminal system does not allow the criticism that Judges have not done justice since they are related to parties. In order to create confidence in the minds of public, the above system has been introduced. The King, Manu Neethi Chola, decided his own cause and gave a verdict against his son and stood as a model for rendering without fear or favour.

It has been held in various cases by the Supreme Court even now that it is the duty of the driver of the vehicle to take care of the pedestrains, animals and its crossings reasonably and the failure in the discharge of care and attention towards the road users, the liability will be vested with the driver. This is the view of the Chola King while giving his verdict.

The manner of selection of Judges also is referred to in "புறநானூறு" which can even be a guide to the present day in the matter of selection of Judges. A Pandiya King Poothapandian speaks the duties of the King. He says that the first duty of the King is to save people from foreign aggressions. If a King fails in it, it would amount to commission of worst sins like appointing a person who are not learned and not fit in the Courts of Justice and, thus, perpetraing unjustice. The same is exposed in the following words.

அறநிலை திரியா அன்பின் அவையத்து
திறனில் ஒருவனை நாட்டி முறை
திரிந்து மெலிகோல் செய்தேன் ஆகுக.

"அறநிலை திரியா அன்பின் அவையம்" means Courts of Justice. "மெலிகோல் செய்தேன்" means perpetration of injustice.

In the same lines, Athiveerarama Pandiyan in "நறுந்தொகை" (Narunthogai) says that the consequences of a wrong justice being rendered and the plight of the judges in future in the following words.

இருவர்தம் சொல்லையும் எழுதாம் கேட்டே
இருவரும் பொருந்த உரையாராயின்
மனுமுறை நெறியின் வழக்கிழந்தவர்தாம்
மனமுற மறுகி நின்றழுத கண்ணீர்

முறையுறத் தேவர் மூவர் காக்கினும்
வழி வழி சிறவதோர் வாளாகும்மே"
வேதாளம் சேருமே; வெள்ளெருக்குப் பூக்குமே,
பாதாள மூலிபடருமே; மூதேவி
சென்றிருந்து வாழ்வளே! சேடன் குடிபுகுமே!
மன்றோரஞ் சொன்னார் மனை. நல்வழி

The "Silapathigaram" demonstrates that the king awarded death sentence for himself for having perpetrated injustice in having killed Kovalan.

அரசியல் பிழைத்தோர்க்கு அறங்கூற்றாவதூம்

"அரசியல் பிழைத்தோர்" means rendering injustice.

"அறம்" means justice.

"கூற்று" means death.

Kannagi enters into the Court of Pandiyan King Neduncheliyan who ordered the be-heading of her husband Kovalan by a wrong judgement that Kovalan had stolen the queen's anklet. On seeing Kannagi with tears flowing like a stream, the Pandiya King exclaimed that such sorrow is alien to his kingdom and asked her to reveal what had happened and she revealed in the following words:

"Oh! Hasty King! I hail from the country ruled by a King who moved by the sorrowful tears of a cow, decided to run over his only son by his chariot for the rashness of the Prince running the chariot over the calf and killing it!".

"வாயிற் கடைமணி நடுநா நடுங்க
ஆவிற் கடை மணி வருநீர் தன்நெஞ்சு சுடத்தான் தன்
அரும்பெறற் புதல்வனை ஆழியின் மடித்தோன்
பெரும் பெயர்ப் புகார் என்பதியே!

Kannagi thus extolled the virtue of justice in contrast to the injustice inflicted on her husband. She further states that,

ஏசாச் சிறப்பின் இசைவிளங்கு பெருங்குடி
மாசாத்து வாணிகன் மகனே ஆகி
வாழ்தல் வேண்டி ஊழ்வினை துரப்ப
சூழ்கழல் மன்னா! நின்னகர்ப்புகுந்து
ஈங்கு என் கால் சிலம்பு காத்தல் வேண்டி
நின் வாள் கொலைக் களம்பட்ட கோவலன் மனைவி
கண்ணகி என்பது என் பெயர்

Pandiyan King said,

கள்வனைக் கோறல் கடுங்கோல் அன்று
வெள்வேற் கொற்றப் காண்!

which means that killing a thief is not an illlegal act. It is the rule of the Government to remove him from the world in orrder to maintain the security of the properties of the State.

Thereafter, she conducted trial and produced the evidence before the Pandiya King that the anklet which was possesed by Kovalan did actually belong to her and not to Kopperundevi. Having got shocked over this; the Pandiya King fell down from the dias and the following died instantaneously.

மணிகண்டு தாழ்குடையன் தளர்ந்த செங்கோன்
பொன் செய் கொல்லன் தன் சொற்கேட்ட
யானோ அரசன்? யானே கள்வன்
மன்பதை காக்கும் தென்புலம் காவல்
என்முதல் பிழைத்தது! கெடுக என் ஆயுள்

Thus, realising his irretrievable mistake, he self inflicted the punishment on him and killed himself. The Silapathigaram gives out the following aspects:

(i) Death sentence was given by the Pandiya King to Kovalan without conducting any enquiry.

(ii) Pandiya King passed the order on the basis of hear-say evidence from the Goldsmith who was the real culprit, gave punishment of hanging to Kovalan hurriedly and hastily.

(iii) Pandiya King, without verifying, by examining the witnesses and without giving any opportunity to the alleged accused Kovalan to put forth his case, had hurriedly pronounced judgement and gave sentence of death. So, as per the criminal system prevailing then, justice was to be rendered only after conduct of fair trial, examination of witnesses, hearing from the accused and then alone the judgement had to be pronounced.

In this case, the Pandiya King pronounced death sentence to himself for having perpetrated serious injustice caused.

The methodology or the procedure adopted in dispensing justice in finding out the genuineness of the document is equally interesting. In Sekkizhar's `Periyapuranam' Sundarar's story is narrated. Sundarar was one of the four Saiva Saints and he was born at Thiruvennainallur. At the time of his marriage, Lord Siva retrieved him from worldly life and made him follow a divine path with the help of judicial machinery. Taking the form of an old man, Lord Siva arrived at the marriage pandal and wanted the wedding to be stopped as Sundarar was his slave and he had no right to marry. In support of his contention, the old man produced a cudgeon leaf in which the grand father of Sundarar had given in writing stating that he and his descendants are ths slaves of the bearer of the document.

Sundarar, in a fit of anger, got the cudgeon leaf and destroyed it. The old man exclaimed that it was only a copy of the document (Padi Olai) and that he had the original (Moola Olai) and with that he would approach the Courts of Justice at Thiruvennainallur. He approached the Court and filed a complaint stating that his slave, Sundarar, should not marry and that he was bound to do what he ordained. The Presiding Officer of the Court asked the old man to prove his case in one of the three recognised modes of proof of a Case.

ஆட்சியில் ஆவணத்தில் அன்றி மற்று அயலார் தங்கள்
காட்சியில் மூன்றில் ஒன்று காட்டுவாய் என்னமுன்னே
மூட்சியிற் கிழித்த வோலை, படிஒலை, மூல ஒலை
மாட்சியிற காட்ட்வைத்தே என்றவன் மாயைவல்லோன்

These three being (1) immemorial usage (*ஆட்சியில்*).

(2) document (*ஆவணத்தில்*) and (3) oral testimony

(*அயலார் காட்சியில்*).

The old man produced the original before the presiding officer. In the meanwhile, sundarar came forward with a preliminary objection to the trial stating that he cannot be enslaved since he being a Brahmin, a fact which the Court ought to take judicial notice of (*அந்தணர் அடிமை ஆதல்இவ்வுலகில் இல்லை*). But, the preliminary objection was overruled as the old man produced the cudgeon leaf in original. The presiding officer looked into it and ascertained whether it was an old document which could be received without proof. Having come to the conclusion that it was an old document, they sent for the document executed by the grand father of Sundarar from the Registry of Documents and compared the signature and found them tallied.

வாசகங்கேட்ட மன்னர் மற்றும் மேலழுத்திட்டார்கள்
ஆசிலா எழுத்தை நோக்கி அவைஒக்கும் என்ற பின்னர்.

Ultimately, the Court came to the conclusion that Sundarar was the slave of the said old man and the old man ordered Sundarar to follow him and entered into the Siva Temple at Thiruvennainallur and disappeared. Sundarar, then, realised the divine kindness in redeeming him and bestowed his entire life to the divine work.

Sekkizhar, the author of Periyapuranam, was a Minister in Chola Court. Now, we have got several sections to the effect that oral testimony must be given by the person himself and he must depose only what he knows personally. Hearsay is not an evidence. All these ideas borne out by several sections are condensed in one word,

Now, we are following the Anglo Saxon Jurisprudence which is based upon a feudal background. "The King can do no wrong``, is the axiomatic principle. But, ours is a different concept where even the King is not above the law.

In "*அகநானூறு*" there is a reference about the judgement of the elders in the village giving punishment to the person who had illegal intercourse with the girl assuring that he would marry her and, then, refused to marry her. As per the judgement, he was killed in *சுண்ணாம்புக் காளவாய்.*

"திருநுதற் குறுமகள் அணிநலம் வவ்விய
அறனிலாளன் அறியேன் என்ற
திறனில் வெஞ்சூள் அறிகரி கடா அய்
முறியார் பெரும்கிளை செறியப் பற்றி
நீறு தலைப் பெய்த நான்றை
வீறுசால் அவையத் தார்ப்பனும் பெரிதே!

According to Salmond justice is to adhere to the common way of life without any evil motives in life. The same is revealed long back by Thiruvalluvar as,

மனத்துக்கண் மாசிலன் ஆதல் அனைத்தறன்
ஆகுல் நீர பிற.

whereby was reiterated that no evil thoughts should be allowed to enter into the heart.

The present day pattern also points out that law may shortly be described in terms of a legal order tacitly or formally accepted by a community and it consists of the body of the rules which that community consideres essential to its welfare and which it is willing to enforce. Salmond also explains that Justice is the end, Law is merely the instrument and the means and the instrument must be defined by reference to its end. The common law is nothing but the decisions rendered by Courts.

Law is more than an aggregate of laws. It is what makes laws the living instruments of justice. It is what enables Courts to administer justice by means of laws.

We must always bear in mind that in law, we have a taught tradition of experience developed by reason and reason tested by experience. One of the significant phenomena in the history of civilisation is the vitality on such taught traditions.

On an analysis, we come to understand that most of the rules emanated from the origin of justice. For example, the rule that we have to love our neighbour becomes in law that we must not injure our neighbour.

There exists a close bond between law and morals and it is impossible to undertand the nature of English Law unless we also reccognise the various moral ideas which it represents.

The moral sense is one of the dominant forces not only in establishing the efficiency of law but also in its very existence. The Law Courts were called, "அறங்கூறவையம்" in the ancient days as may be seen from the Silapathigaram in the following words.

அரைசுகோல் கோடினும் அறங்கூறவையத்து
உரைநூல் கோடி ஒரு திறம் பற்றினும்
நாவொடு நவிலாது நவை நீருகுத்துப்
பாவை நின்றழூஉம் பாவை மன்றமும்

These lines show that the court itself would weep if the justice is failed.

Ethics concentrates on the individuals rather than society. Law is concerned with the social relationship of men rather the individual excellence of their characters.

In ethics, we aim at perfecting individual character of men rather than the individual excellence of their characters.

In ethics, we aim at perfecting individual character of men while law seeks only to regulate the relations of individuals with each other.

The act alone does not amount to guilt unless it is accompanied by a guilty mind or motive. "Actus non facit reum, nisi mens sit rea" which means that it could not be considered to be an offence unless it is carried out wilfully and motivatedly.

எனைத்தானும் எஞ்ஞான்றும் யார்க்கும் மனத்தானா
மாணா செய்யாமை தலை.

This means causing harm with bad motive is an offence. This is called as guilty mind. Attention was, thus, more strongly directed to the mental element in crime and the moral notion gradually crystallised into a rule of law.

No act, otherwise lawful becomes unlawful, because done with a bad motive and conversely no act, otherwise unlawful, is excused or justified because the motive is however good.

The Law Commission recently opined:

"We do not find that it is permitted to any person to set up his private intentions or to allege virtuous motives simply as defence or excuse under a criminal charge ... To investigate that real motive, in each case, would be impracticable and evn if that could be done, a man's private opinion could not possibly be allowed to weigh against the authority of Law".

The same view is impliedly expressed by saint Thiruvalluvar long back in the following words:

ஈன்றாள்பசி காண்பான் ஆயினும் செய்யற்க
சான்றோர் பழிக்கும் வினை.

Section 191 IPC speaks about false evidence. The same is mentioned long back by Thiruvaluvar in the following words:

தன்னெஞ் சறிவது பொய்யற்க பொய்த்தபின்
தன்னெஞ்சே தன்னைச் சுடும்.

False evidence means, evidence knowing it to be false and that evidence must be given with the intention to damage the person, otherwise it cannot come under the categories of any of the offences including defamataion. Thiruvalluvar says,

வாய்மை எனப்படுவது யாதெனின் யாதொன்றும்
தீமை இலாத சொல்.

and

பொய்மையும் வாய்மை யிடத்த புரைதீர்ந்த
நன்மை பயக்கும் எனின்.

Section 415 IPC defines cheating. The same iis simply stated by Thiruvalluvar as,

உள்ளத்தாற் பொய்யாது ஒழுகின் உலகத்தார்
உள்ளத்துள் எல்லாம் உளன்.

In Rex vs Dudley and Stephens (1884), the English Judges held the inevitable necessity for killing a boy and eating his flesh by three sailors for their survival and sustenance was held to be an offence. The same is propounded in Thirukkural as follows:

தன்னுயிர் நீப்பினும் செய்யற்க தான்பிறிது
இன்னுயிர் நீக்கும் வினை.

Though law and morality are not the same and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence and such divorce would follow if the temptation to murder in the case above were to be held by law an absolute defence of it. But, the deeds were 'devilish' and if such principle once admitted might be made the legal clock for unbridled passion and atrocious crime.

The Right, Duty and Liability which is now well defined under our Constitution had long back been revealed by Thiruvalluvar in the following words:

செய்தக்க அல்ல செயக்கெடும் செய்தக்க
செய்யாமை யானும் கெடும்.

Indian Penal code defines offence as commission and omission of certain acts. Section 268 is also in conformity with the above Thirukkural.

"A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public."

Thiruvalluvar long back said,

குடிபுறங் காத்தோம்பி குற்றங் கடிதல்
வடுவன்று வேந்தன் தொழில்

The said principle is only now applied in view of the fact that the "State" is the prosecuting authority in respect of criminal justice.

Retributive punishment is that which serves for the satisfaction of that emotion or retributive indignation which in all healthy communities is stirred up by injustice. We hang murderers not merely that we may put into the hearts of others like them the fear of a like fate but for the same reason for which we kill snakes namely because it is better for us that they should be out of the world than in it. The only justifiable purpose of punishing offenders is the protection of the society by the prevention of crime.

The Judge stands to the criminal in the position of the doctor who selects his remedy after diagonising the disease and the resources of the patient's organisation.

Modern criminology considers that the personality of the offender is as important as his act and emphasizes that the wrong doer is not only a criminal but a patient to be treated. The same is said by Valluvar long back as follows:

நோய்நாடி நோய் முதல்நாடி அதுத்தணிக்கும்
வாய்நாடி வாய்ப்பச் செயல்

It is unjust to treat unequals equally as to treat equals unequally. The same is revealed by Thiruvalluvar long back in the following words:

தகுதிஎன ஒன்று நன்றே பகுதியாற்
பாற்பட்டு ஒழுகப் பெறின்.

The same is also imcorporated in our Constitution under Article 14.

Justice is social happiness according to the modern theory of jurisprudence. The same is propounded by Thiruvalluvar in Thirukkural 39.

Law is a social institution to satisfy social wants. Under section 302 IPC, the Court can convict a person and sentence him to undergo life or to death. Previously, in all the murder cases, invariably death sentence has to be imposed and if the Judge inclined to impose life sentence, he should give reasons. In other words, the life sentence was given in rare cases. But, at this present context, the entire concept has been changed. Now, the Supreme Court insists that the death sentence should be given only in rarest of rare cases and the life sentence is the normal rule.

However, the Supreme Court, in the larger bench, has decided that the sentence of death is not unconstitutional. In the present day world, in several countries, the practice of imposing death sentence has been completely given up. In India, the Supreme Court still feels that the death sentence can be imposed in exceptional cases. The very same concept had been accepted even in the Sangam period. Thruvalluvar says,

கொலையிற் கொடியாரை வேந்தொறுத்தல் பைங்கூழ்
களை கட்டதனொடு நேர்.

While punishing an offender, hard and fast rules cannot be laid down but the decision must be left to the discretion of the Court. The discretion has to be guided by the variety of considerations. The nature of the offence, the circumstances under which the offence is committed, the nature of the grievance suffered by the victim, the motive for the offence and the conduct of the offender are some of the considerations.

The modern criminology considers that the personality of the offender is as important as his act. It emphasis that the wrong doer is not only a criminal but a patient to be treated. The principle object of the punishment today is the protection of the society, but this is achieved partly by reforming the criminal and partly by detering the criminal and the others from committing crimes in future.

Thiruvalluvar says,

தக்காங்கு நாடி தலைச்செல்லா வண்ணத்தால்
ஒத்தாங்கு ஒறுப்பது வேந்து

(1) To see the nature of the offence.

(2) To see that the offender does not repeat the said offence; and

(3) To see the grievance of the victim and his family. These are the main guidelines to be taken into account to give punishment to the offender suitably.

The punishment should not be given more than the limit because it would affect the entir criminal administrative system of the Government. According to Thiruvalluvar, the undue punishment is, 'கையிகந்த தண்டம்'.

கடுமொழியும் கையிகந்த தண்டமும் வேந்தன்
அடுமுரண் தேய்க்கும் அரம்.

Since the punishment is retributive system, the offender should be threatend with more punishment but, ultimately, less punishment alone should be given, so that it would create the positive effect in the mind of the offender in the process of taking corrective measures for reforming himself. It would strengthen the power of the administrative machinery too. Thiruvalluvar says,

கடிதோச்சி மெல்ல எறிக நெடிதாக்கம்
நீங்காமை வேண்டு பவர்.

The equality are of two types. One is Arithmatical equality i.e., equality among the people with equal status. The second is Proportional equality i.e., equality among the people who belong to different classes. The equality has got to be considered in relation to the class or ground on which the claims are made. This means arithmatical equality for equal class. The Proportional equality applies to the persons when there are relevant ground for differentiation. This is called as reasonable classification. Thiruvalluvar says,

தகுதிஎன ஒன்று நன்றே பகுதியாற்
பாற்பட்டு ஒழுகப் பெறின்.

- The experts in law says that it is as unjust to treat unequals as to treat the equals unequally. Justice is concerned with the problems of balance and adjustment.

So, many of these concepts we had in our own culture, which are so rich and so varied but we have forgotten all these. The literatures from Sangam period show that we had already built our own jurisprudence which is now being followed even by the other countries. The basic concept of legal jurisprudence is that, ``the social justice which has to be delivered to all the people forgetting the technicalities of law".

We have to restore the credibility of the administration of justice prevalent from the days of the Sangam period and make it an effective vehicle for delivery of Justice to the common man, tribals, landless peasants, bonded labourers and the exploited workmen.

6 LAND AND LAW DURING THE CHOLA RULE

Dr.K.A.Manikumar

There were a number of judicial institutions in ancient and medieval India. Yet, no record of their activities survived to transmit to the posterity the knowledge of how various laws were applied in practice. Consequently, the British while ruling India entertained a false notion that there was no native law worth the name and asserted that whatever they introduced in the realm of administration of law was their valuable conrtibution to Indian legal system.[1] This is nothing but travesty of truth when we view it in Tamilnadu context. The objective of this study is to attempt an account of land laws followed in the Chola time to throw light on Tamils' legal heritage in an important arena of agrarian system. The Chola period of 10th to 13th centuries is chosen for focus because it was during that period, an elaborate agrarian order had emerged, the chief characteristics of which persisted till the advent of the British.

The British believed that the code of Manu, which did not recognise the rights of any third party in land other than the king and the peasant, was customarily followed. They dismissed the code as obscure in view of the complex, nature of land tenure system prevailing in their times.[2] But, contrary to the opinion expressed by the British, a body of law much more definite and comprehensive than the traditional laws of the Hindus as found in the code of Manu had been enacted and enforced during the Chola period. Indian scholars missed the essence of a well established agricultural system of the Chola empire because of the polemic of Aryan-Dravidian dichotomy. In this paper, the agrarian order that crystalised during the chola rule necessiatating necessary changes in agrarian relations is first discussed. Second, the rise of landed aristocracy and the state laws governing them are highlighted. Third, the practices pertaining to classification and assessment of land and the administrative network for the control of the whole system are analysed. Finally, the areas in which the British had no option but to simply adopt the procedure of the Cholas in administering the land are focussed.

The Chola rulers conceived a new plan to colonise their conquered territories. 'Privilege in land assessment' was the incentive they offered to encourage colonising endeavour in the country. The colonists hailing from different places and families formed the village groups for whom the unifying and binding factor was kinship.[3] The head of each family group commanded a major share (pangu) in the village's collective assets. 'Pangu', apart from representing a family's right to a portion of the produce from the land, also entailed a responsibility to provide a share of capital or labour, a share in the burdensome irrigation building and a share of the revenue demand of the state.[4] Clearing forest, digging

irrigation tanks and the like required collective effort and hence the joint-tenure was considered economically viable proposition then. The terms Sabha-manjikkam and ur-manjikkam and urppodu found in inscriptions point to the communal ownership of land in the Chola times.[5]

These peasant communes apart, there were three other classes of tenures namely 1. Service tenure which is described as jivitha, bhoga, and kani etc., 2. Eleemosynary (charitable) tenure such as brahmadeyaand devadana and 3. Velanvagai that is akin to ryotwari villages.[6] The service or military tenures were assigned to feudal chieftains as padaiparru in return for their maintaining a stated number of soldiers ready for service when required by the king.[7] The estabilishment of brahmadeya and devadana led to creation of an intermediary order between the state and the cultivator, which the code of Manu did not envisage. As regards brahmadeyas, they were of three types. In the Kudinikka type, the tenants and agricultural labourers were transformed along with the land. In the brahmadeya of kudiakki type, the brahmin landlords who happened to be non-agriculturist, had to bring their own tenents and labourers. Usually, a brahmadeya land was shared by a number of donees, But ekabhoga brahmadeya was meant to benefit only one individual. The Anbil plates of Sundara Chola recorded the gift of one such ekabhoga brahmadeya of ten velis of land by the king.[8]

The devandana lands were managed by the temples that were supervised by both the village assembly and the state government. Waste lands and forestlands were endowed to temples at the nominal annual rents. The temples leased out these lands under an arrangement according to which the celaring, levelling of land and the provision of irrigation were conditions of tenancy.[9] Usually, the temples fixed the nature and the extent of services to be rendered by the occupants. The services were in the form of supplying oil for temple lamps, conducting worship and keeping watch over the temple.[10]

The tenants occupying temple lands enjoyed more favourable terms than others. They could not be removed without the prior permission of the king. One of the Thanjavur inscriptions of A.D.1112 of Kulothunga recorded an instance in which the king had sanctioned a proposal to remove the tenants occupying the devadana land in default of their payment of melvaram.[11]

The velanvagai villages resembled the ryotwari villages. These villages had direct dealings with the state government. The tax charged on this type of land was liable to revision from time to time. Though the settlement in most cases was with the village as a whole, settlement with individual cultivators was also in practice.[12] There were also individual big landlords bearing titles such as udaiyan, araiyan, Velan and alvan which indicate the emergence of landed aristocracy during the Chola period.[13]

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The temples and landlords took extreme caution while doing transaction with their tenantry. When a landlord or a temple leased out land they insisted on somebody standing as surety for the lease. In a certain village when a landowner parcelled out the land and distributed them to several individuals for lease, the local temple servants stood as surety.[14] David Ludden reports an incident that took place in a village of Ramanathapuram district where in the wake of a murder, the tenants fled the village leaving the rent unpaid. As a result the securitors had to pay the rent by borrowing money from the temple which held the land *in its possession till the loan was repaid.* [15]

There are a lot of indirect evidences to suggest that individual landholding was not uncommon in the Chola times. The term 'ennudaiya' (my) used in the transactions of the three of the seven villages surveyed by Karashima indicate clearly that the seller was the holder of the land.[16] K.A. Nilakanta Sastri noticed several instances of alienation by sale or right of the ownership of the land by individuals and of the inheritors of such property from father to son.[17] A record of A.D.1215 from Pudukkottai deals with a land sale to two merchants. It was a kudininga devadana land. The two merchants had to give to the temple 30 kalams of paddy each in a year in which the yield of the land was normal. In lean years, they had to remit 21/2 kalams on each ma of land actually cropped.[18] Private property in land had come to stay even in Sangam age with kings or cheiftains gifting away cultivable land to bards and warriors and hence the absence of enumeration of land transfers of private nature in inscriptions could hardly be a basis for building up a case for non-existence of private landholdings.

The king had feudal relations with ur, nadu, nagaram and brahmadeya. Ur was the administrative organisation of the non-brahamadeya villages and it was responsible for the payment of tax (irai). The phrase 'ur uludugondu' found in some inscriptions is suggestive of the situation wherein the land was cultivated by ur members. The lands given to some persons as remuneration for their services was cultivated by a group of agricultural labourers who were not the members of the ur. In Allur, a village in Cholamandalam, studied by Karashima, the land held by the members of the ur in common was cultivated by them while the other lands that belonged to the temple, astrologers and dancers were cultivated by the people other than the ur members.[19] These cultivating tenants presumably belonged to Parakudi or tenant-at-will of the later times as they did not enjoy fixity of tenure.

Nadu, according to Burton Stein, was 'a complex society consisiting of relatively large population, considerable wealth and diverse social groupings living in numerous pluralistic settlements.[20] But for Y.Subbarayalu, 'nadus were agricultural regions formed out of groupings

of agricultural settlements,each consisting of a group of cultivators tied together by marriage and blood relation.[21] However, both agree that a nadu referred to an agrarian region. The 'nattar' mentioned in numerous inscriptions belonged to a dominant peasant group of the locality. When land grants were made by the king,the receipients of the royal order were nattar. They had to point out the boundaries, to go around the hamlet accompanied by a female elephant, to set upboundary stones and cactus to demarcate the area and hand over the deed of the gift to the beneficiary.[22] The nattar classified and registered lands in the locality. They controlled the valuable land whose income went as gift to the pious and the learned. They possessed the wherewithal for maintaining the full productivity of the lands that were dependent on irrigation tanks.[23]

The control of nattar over a locality was based on their military ability to build up defence against both peasant and non-peasant maraudars. The best organised military organisation of the peasantry named, 'Valangai Velaikkara soldiers of right hand division' in the coromandal region of the Chola state was the outcome of such a compulsive situation.[24] The nattar had an official called nadu-kankani to serve under him. He supervised temple accounts and income derived from devadana lands.[25] The most important officer who conducted the revenue survey and settlement was nadu-cey or nadu-vakai-cey adhikari.[26] Nadu is microcosm of a macro-agrarian structure in the state and hence organisation of agriculture in nadu gives us an idea of the elaborate arrangement evolved for land administration in the Chola times.

There was also a well defined method of land classification in vogue during the period. In one of the epigraphs of Parantaka I, six classes of land were noted down. The wet land was mentioned as nancey or nirnilam. All paddy fields were classified as wet land. Dry land was referred to as puncey. Non-paddy fields were included in this category of land. Another type of land known was tottanilam (garden land).[27] The British adopted only this three fold system and all available information on land use in the latter half of 18th century was given only in the said three categories.[28] A fourth class of land was kalar-nilam (saline land) that was considered an inferior land.[29]

An inscription of eleventh century mentions another category known as barren lands or wastes for grazing cattle which the early British records called pasture (meychal).The sixth variety of land recognised by the Tamils was the tarisu which the British referred to in their record as banjar.[30]

A noteworthy feature of Chola period was the development of irrigated agriculture. The frequent occurence of the term 'Vaykkal' in Chola inscriptions testify to the existence of a well-developed irrigation in the country.[31] Hundred years later the awe-struck Arab traveller

Alberumi remarked about the embankment of sixteen miles long built by Rajendra I in Gangaikonda Cholapuramin the following words: "Our people when they see them, wonder at them and are unable to describe them, much less construct anything like them".[32] Inspite of importance attached to irrigation, the state did not have any department of irrigation or Public works. Such activities were left to individuals, village Sabhas and temples. That an utmost care was taken for the upkeep and maintenance of irrigation works during the period is illustrative of the strong traditions built by the Tamils in attending to this very important aspect of agricultural development.

The village assemblies had to get the silt removed every year before the rain set in. Special endowments, tank-wise, were instituted for that purpose. In areas where river formed the chief source of irrigation, free labour was extracted from the holders of the land. Vetti and amanci were the terms referring to such unremunerated services. Arrukkal-vetti and arrukkal-amanci were rendeed by cultivators for the proper up keep of channels branching from the rivers. The work relating to the maintenance of the bunds of a river was distributed among the villages situated on the banks of the river and such an arrangement in Kaveri river basin was known as Kaverik-karai-Viniyokam.[33]

In tank irrigated ivllages, the people who were utilising rain-fed tanks had to render services known as cennir-amanci and cennir-vetti for cleaning,deepening and deilting the tank for proper upkeep of its sluices.[34] The headman of Vijayanarayanam in Tirunelveli district himself paid for the repair of a local tank that breached in thirty two places during a storm and they endowed a piece of land to the village for the regular maintenance of the tank.[35] In villages where special endowments were non-existence or no free labour practice prevailed, a small cess named 'eri-ayam' was levied. The sabha of Bahur by a resolution passed in its general asssembly in 996 A.D levied eri-ayam on all kinds of land situated within the village.[36] Innilatal-Vanta-nirkirai referred to the cess fixed on the basis of a unit of the land that used water for irrigation.[37]

The temples were also expected to undertake reclamation work. Srirangam temple inscriptions of the reign of Kulotunga detail about an incident in which a large portion of the temple lands got buried under sand by floods of the Kaveri river. In this recorded instance subsequent reclamation work was carried out by the temple. As observed by A.Appadurai, temple sponsored reclamation projects were carried out under favourable lease terms.[38] At the time of transfer or sale of land, the water rights attached to the land were also clearly stated.

Many of the Mahasabha inscriptions mention about committees of the village assembly charged with the supervision of various aspects of cultivation. Two of the important committees or Variums of Uttramerur

(Chengalpattu) assembly were the Tank Committee (eri varium) and the garden committee (totta-varium). In the Mahasabha inscription of Kaviripakkam, a brahman village, the following committees had been recorded. Kalani-Variyam for the maintenance of sluices and Tadivali-Varium for the supervision of paths and roads around cultivated fields.[40]

The temples served as banks in providing credit to agriculturists. Cash grants received by temples were lent to the landholders of the locality who in turn had to supply prescribed quantities of goods to the temples on a regular basis. Temples also loaned out for mortgages.[41] When a loan secured from the temple could not be repaid by the village assembly, temple authorities possessed the right to alienate the land or attach a share of its income from a neighbouring village.[42] The temple-directed agricultural development and the existence of various committes to oversee various aspects of cultivation are parameters to discern a highly accomplished peasant society.

Whether a village was a brahmadeya or a non-brahmadeya, the state claimed its share in the products of the land. The Kings' oral order (tiruvaymolintharuli) fixing the quantum of tax on land was communicated to village assemblies through the Tirumandira-olai officer.[43] There were revenue units for the purpose of tax assessment and tax collection. The king had authority either to bifurcate an existing unit or merge a few villages to create a new unit. Kuru-ceyvar and Varikuru-ceyvar were the officers appointed by the king for enforcing his royal orders on revenue divisions.[44] Grading or classification of land in the order of fertility (taram-idudal) and registration of title and tenure (Vagai-Ceydal) preceded assessment.[45] A revenue department known as Puravu-vari-tinak-kalam had come to exist from the time of Uttama Chola.[46]

In brahmadeyas, where tenancy cultivation had become order of the day, melvaram, a higher share of the produce of the land, was paid to Sabha or Mahasabha. Another portion of income referred to as kudivaram or lower share, was retained by those who actually took part in cultivation. The taxes for brahmadeyas and life-time tenures (janmabhumi) granted to military officers of the state were assessed on a permanent basis. In A.D.985,a chieftain fixed 25 kalancu of gold as nilai-irai on a land granted as janmabhumi to an individual and stipulated that no further reassessment be made in future.[47]

The particulars of the land revenue due (kanikkadan) to the government or to the temple were stated clearly in the inscriptions.The Thanjavur inscription for instance had recorded the description of 40 villages granted by Rajaraja I to the Thanjavur temple. The description encompassed (a) the area of each village (b) lands to be declared as tax free c) area of the remaining taxable land (d) and the amount of paddy to be measured or money to be paid on taxable land.[48]

In non-proprietory villages, velanvagai for instance, there was no landlord or intermediary involved. The produce was simply divided into melvaram, the states' share and the kudivaram, the landholding cultivators' share. The produce from the land held in common by the ur members was also divided into two parts namely the government's share and the landholding cultivator's share. Where the proprietor of land were not cultivator's themselves, apart from melvaram and kudivaram, the Lord's share called tunduvaram was also charged. For example, the products of land held by the temple, military officials, merchants, astrologers, dancers etc., were divided into melvaram, kudivaram and thunduvaram.[49]

The collection of land tax at the rate of 1/6 of the total produce, as state's share, as suggested by Manu, turns out to be a myth in the case of Chola state. All available figures indicate that a higher proportion of revenue was claimed as state demand. In Jeyangonda Cholamandalam, one of the conquered territories of the Cholas, the melvaram charged for dry lands with dry crops was 1/5 while for tank-irrigated lands, a melvaram of 1/3 was collected.[50] According to Chidambaram inscription of Rajakesari Rajendran, the melvaram on 44 veli of land that yielded 4500 kalams of paddy was 50% of the total produce.[51] A Mysore inscription of the time of Rajadhiraja gives the melvaram rate as two-fifths for wet land and one-fourth for areas under dry cultivation.[52]

A survey conducted by Prof. Karashima revelaed that in areas where assessment was made in paddy, the rate varied from seventy seven kalam to hundred kalam per veli. Even if we are to take the lowest rate into account, the revenue rate works out to 2/5, based on the calculation of 4500 kalam yielding 44 velis of land getting assessed at 50%. This is exactly what the British levied for wet lands. Yet the taxation was not considered oppressive on account of well established irrigation works provided by the Chola rulers. The British on the other hand, neglected irrigation and left agriculture to its deteriorating condition.

In feudalism of European and continental types, robber knights seizing land and settling down as noble lords were law unto themselves. This feature was absent in the Chola state and not individuals but institutions such as ur, nadu, nagaram and brahmadeya bore the burden of governance. These units collectively endeavoured to achieve self-reliance and self-sufficiency in their micro-regions and the co-operative farming attempted even within the feudal system was commendable. Though the system precluded direct state control, it could not dispense with the exploitative elements. The state also had an apparatus through which it maintained its grip over the subordinate administrative organisations. There was a practice of temple auditing from the days of Aditya II.[53] The royal officers known as puravu-varik-kuru-ceyvar and

puravuvari-nayakam-ceyvar were entrusted with the responsibility marking new boundaries and settling boundary disputes.[54] As seen in the administration of nadus, the king's consent had to be obtained for several agricultural matters. He had the discretion to permit the cultivators to stay or to displace them with a new group of tenants. The term 'urnikki' found in the inscriptions is suggestive of the displacement of former cultivators.[55]

Notwithstanding the disintegration of the Chola kingdom and the following militarisation of the agrarian structure during the Nayak rule, the practices left behind by the Cholas survived.

When the colonial government in Madras was making enquiry into village tenures, it noted, in Tamil districts in particular, the existence of co-sharing bodies claiming right over the lands and this prompted the Board of Revenue to come up initially with a plan of dealing with each village group as a unit (village lease system), thereby avoiding the cumbersome task of dealing with each landholder separately.[56] Later, when the English resolved to introduce ryotwari settlement, in view of the surviving traditions, the kani right holders (mirasi) offered stiff resistence to their move. The collector would issue pattahs to tenants and the mirasidars would sue him immediately in the court. Complaints of resistence came prominently from such co-shares from Thanjavur villages. The Board of Revenue could meet the situation only with a compromise of 'accomodating mirasidars to the fullest possible extant'.[57] In the same way the Raj tried its best to do away with the temple lands. But it had to beat a hasty retreat in view of the anticipated protest from the people. The silent evolution of Inams eventually took place in South India, [58] the elaboration of which is not our concern here.

FOOT NOTES

1. Sir Benjamin Lindsay in L.S.S.O.'Malley (Ed.,) Modern India and the West (London, 1968), pp. 17-137.
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3. Baden-Powell, The Village Community (Delhi, 1977), p. 374.
4. David Ludden, Peasant History of South India, (Delhi, 1989), pp. 88-89.
5. K.A. Nilakanta Sastri, The Colas (Madras, 1984), p. 567.
6. Ibid., p. 570-572.
7. Ibid., p. 572
8. Ibid., p. 577.
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10. K.A. Nilakanta Sastri, Op. Cit., pp. 574-575.

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15. Ibid.

16. Karashima, South Indian History and Society AD 850-1800. (Delhi, 1984),. p. 11.

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18. Ibid., p. 582.

19. Karashima, Op.cit., p. 11.

20. Burtonstain, Op.cit., p. 111 & p. [illegible]7..

21. Y. Subbarayulu, Political Geograpny of the Chola Country (Madras, 1973), p. 32.

22. Burton Stein, Op.cit., p. 120.

23. Ibid., p. 131; See also K.A. Nilakanta Sastri, op.cit., p. 467. & pp. 504-505.

24. Ibid., p. 124.

25. Ibid., p. 111.

26. P. Shanmugam, The Revenue System of the Cholas (Madras, 1987), p. 69.

27. P. Shanmugam, Op.cit., p. 69 & pp. 72-73.

28. Brian J. Murton, "Land and class: cultural, social, Bio-physical Integration in Interior Tamilnadu in the late Eighteenth Century" in Robert Eric Frykenberg (Ed.,) Land Tenure and Peasant in South Asia (New Delhi, 1977), p. 86.

29. P Shanmugam, Op. cit, pp. 72-73.

30. Brian J Murton, Log Cit.

31. Karashima, Op cit, p 129.

32. Quoted by Jawaharlal Nehru, Glimpses of World History (London, 1949), p. 128.

33. P. Shanmugam, Op. cit., p. 50.

34. Ibid., p 51.

35. David Ludden, Op.cit, p. 30.

36. P. Shanmugam, Op cit, p. 85.

37. Ibid

38 Burton Stein, Op cit., pp 162-163.

39. K.A. Nilakant Sastri, Op.cit., p. 583.
40. Burton Stein, Op.cit., p. 169.
41. David Ludden, Op.cit., p. 33.
42. Burton Stein, Op.cit., p. 173.
43. P. Shanmugam, Op.cit., pp. 146-147.
44. Ibid., p. 87.
45. K.A. Nilakanta Sastri, Op.cit., p. 571 & p. 578.
46. P. Shanmugam, Op. cit., p. 69.
47. Ibid., p. 87.
48. Karashima, Op. cit., pp. 94-95.
49. Ibid., p. 11; Also see Baden-Powell, Op.cit., p. 371.
50. Burton Stein, Op.cit., p. 125.
51. P. Shanmugam, Op.cit., p. 70; Note that the standard unit of land was veli (6.6157 acres). 20 ma made up a veli and 100 kuli made up a ma.
52. K.A. Nilakanta Sastri, Op.cit., p. 585.
53. Ibid., p. 581.
54. Ibid., p. 579.
55. Ibid.
56. Baden-Powell, Op.cit., p. 362.
57. David Ludden, Op.cit., p. 111 & p. 179.
58. See Frykenberg's "Silent Evolution of Inams" in his edited work Land and Peasant in South Asia (Delhi, 1977)

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37

HUMAN RIGHTS IN TAMILNADU FROM THE AGE OF SANGAM DOWN TO THE SIXTEENTH CENTURY

M.Ravindran

In recent times, Human Rights and the implications thereof have come to dominate global consciousness. Day in and day out, the newspapers and other media flash stories regarding violations of Human Rights in one part of the world or the other. What are these rights? Were these rights available to ancient Tamils? In this paper, I have made an attempt to answer both questions.

After the victory of the allies in World War II the United Nations Organisation was formed on October 24, 1945. The General Assembly approved certain basic rights called the "Universal Declaration of Human Rights' on December 10, 1948. this 'Universal Declaration contains 30 Articles and it is binding on alll member states of the United Nations. The annexure to this paper gie sthe 30 Articles which comprise the 'Universal Declaration of Human Rights'.

These rights can be broadly grouped under the following heads:

A. EQUALITY - All Human Beings are born free and are equal in digniy and rights (Art.I) Rights against slavery or servitude (Art.4)

Right to recognition as a person before the Law (Art.6)

Right to freedom of opinion and expression (Art.19)

Right to freedom of peaceful assembly and Association(Act.20)

Right to Education (Art.26)

B. Life and Liberty- Right to life,liberty and security of person (Art.3)

Right against torture or cruel, in human or degrading treatment or punishment (Art.5)

Equal Protection of the Law (Art.7)

Right to effective remedy (Art.8)

Right against arbitrary arrest, detention or exile (Art.9)

Right to public hearing (Art.10)

C. **Marriage** - Right to marry and found a family (Art.16)

D. **Elections** - Right to choose representatives (Art.21)

Right to Education (Art.26)

To measure the freedom and equality in a society, education and learning are the yardsticks. Advancement in education and higher learning will not be possible unless the mind is free. The mind can be free only when the surroundings, environment, availability of opportunity, treatment, etc. are proper. Thousands of years ago, ancient Tamils had attained a most elevated plane of learning. This has been revealed by Sangam literature. Without distinction of status in the society, everyone had the opportunity to learn. People belonging to different advocations had access to creative and intellectual pursuits. Men and women of all ranks and classes are known to have composed poems of high order. The following names of poets who find place in Sangam literature clearly establish this fact.

1. Ariyapadai Kadantha Nedunchezhian - King
2. Kanakayan Thathanar - Teacher
3. Madurai Koola Vanigan Seethalai Saathanaar - Grocery Merchant
4. Madurai Aruvai Vanigam Ilavettanar - Cloth Merchant
5. Madurai Perungollanar - Goldsmith
6. Kaniyan Poongundranar - Astrologer
7. Avvaiyar - Poetess
8. Okkur Masathiyar - Poetess
9. Adhi Mandiyar - Princess
10. Kakkai Padiniyar - Poetess

The importance of education and learning has been emphasised by the Pandiya King Ariyapadai Kadantha Nedunchezhian in Purananooru. He says,

"உற்றுழி உதவியும் உறுபொருள் கொடுத்தும்
பிற்றைநிலை முனியாது கற்றல் நன்றே;
பிறப்போர் அன்ன உடன் வயிற் றுள்ளும்
சிறப்பின் பாலால் தாயும் மனந்திரியும்
ஒரு குடிப் பிறந்த பல்லோர் உள்ளும்
மூத்தோன் வருக என்னாது அவருள்
அறிவுடையோன் ஆறு அரசும் செல்லும்
வேற்றுமை தெரிந்த நாற்பால் உள்ளும்

கீழ்ப்பால் ஒருவன் கற்பின்
மேற்பால் ஒருவன் அவன் கண்படுமே! (புறம்)

Another poet-king Adiveerarama Pandian says,

"கற்கை நன்றே, கற்கை நன்றே
பிச்சை புகினும் கற்கை நன்றே
....
....
எக்குடி பிறப்பினும் யாவரே ஆயினும்
அக்குடியில் கற்றோரை மேல் வருக என்பர்"

The fact that kings composed poems commending education and praising the learned shows that education was available to all subjects without distinction of class. One other topic which is of utmost and relevance to the present context is women's education.

"பெருந்தடங்கட் பிறைநுத லார்க்கெலாம்
பொருந்து செல்வமுங் கல்வியும் பூத்தலால்
வருந்தி வந்தவர்க் கீதலும் வைகலும்
விருந்துமன்றி விளைவன யாவையே" (கம்பர்)

The ancient Tamil Kings did not discriminate men on account of their birth. Whatever a man's position on the social scale, if he was learned, he automatically commended the respect of the king.

Thirumoolar says: *"ஒன்றே குலம்; ஒருவனே தேவன்"*

Thiruvalluvar says: *"பிறப்பொக்கும் எல்லா உயிர்க்கும்"*

Men and women of learning were revered and their counsel sought frequently. Poets and poetesses occupied pride of place in the courts of kings.

"எங்கோன் இருந்த கம்பலை மூதூர்
உடையோர் போல விடையின்று குறுகி
செம்மல் நாடவை அண்ணாந்து புகுதல்
எம் அன வாழ்க்கை இரவலர்க்கு எளிதே" - Purananooru.

Poets had freedom of expression and whenever they found fault with the king - be it on the personal or public front - they boldly voiced their discontent and even ventured to condemn him.

"மாரி பொய்ப்பினும் வாரி குன்றினும்
இயற்கை அல்லன செயற்கையின் தோன்றினும்
காவலர்ப் பழிக்கும் இக்கண் அகல் ஞாலம்" - (புறம்)

The men of learning in ancient times never praised underserving monarchs.

"செய்யா கூறிக் கிளத்தல்
எய்யாது ஆகின்று எம்சிறு செந்நாவே" - (புறம்)

Thiruvalluvar says that a king's prime duty is to look after his

subjects well and to protect their rights.

"அல்லற்பட்டு ஆற்றாது அழுத கண்ணீர் அன்றே
செல்வத்தைத் தேய்க்கும் படை"

This concept was also stressed by Thirumoolar

"ஈசன் அடியார் இதயம் கலங்கிடில்
தேசமும் நாடும் சிறப்பும் அழிந்திடும்
வாசவன் பீடமும் மாமன்னர் பீடமும்
நாசமதாகுமே நம்நந்தி ஆணையே"

Thiruvalluvar further says the people stood by their king who, for his part, ensured their rights and dedicated himself to thier well being.

"குடிதழீஇக் கோலோச்சும் மாநில மன்னன்
கடிதழீஇ நிற்கும் உலகு"

Kambar says:

" வயிரவான் பூண் அணி மடங்கன் மொய்ம்பினான்
உயிரெலாந் தன்னுயிரொப்ப ஓம்பலாற்
செயிரிலா உலகினிற் சென்று நின்று வாழ்
உயிரெலாம் உறைவதோர் உடம்பு மாயினான்"

Since a king treats not only human beings but all living beings as his own, he looks after everyone as he will look after himself. He is like one suprim body where all living beings dwell.

The system of electing representatives through Kudaolais, of course, well known to students of Tamil.

Right against slavery or servitude - (Art.4)

In sangam literatures there is no reference to slavery or servitude. This leads us to believe that the concepts of slavery and servitude were alien to the ancinet Tamils. In England, on the other hand, "the state of servitude lingered on till the commencement of the 17th centurey". In 1707 Lord Chief Justice Holt held "As soon as a Negro comes into England, he becomes free". In 1771, Lord Mansfield, in the celebrated case of the Negro Sommerset, pronounced the decision of the Court of King's Bench that Slavery in England was illegal and that the Negro must be set free. IN 1806, slave trade was prohibited in England and it wasonly in 1834 that slavery was abolished in the British colonies. After the civil war, slavery was abolished in the United States of America in 1865 by means of the 13th amendment to the constitution. These facts will prove that slavery was prevalent till the 19th century in much of the "civilised" world. Compared with the history of the advanced countries, the freedom and equality enjoyed by the ancient Tamils is commendable.

Right to life, liberty and security of person (Art.3)

Today we have a judicial system where there are courts at various

levels. In our country, particularly, it is a three tier system. If one is aggrieved by the judgement of the lowest court, one can file an appeal to the appellate court; if one is aggrieved by the judgement of appellate court, one can file a revision to the revisional court. Under our constitution, there are High Courts and a Supreme Court to safeguard the fundamanetal rights of our citizens. In ancient times, at the lower level there were village panchayats where elders of the villages met and resolved the disputes among the villagers. The major disputes were taken up to the courts of kings.

Thiruvalluvar talks about how justice in criminal cases should be rendered.

1. "நோய்எல்லாம் நோய்செய்தார் மேலவாம் நோய்செய்யார்
நோயின்மை வேண்டு பவர்"
2. "குடிபுறங்காத் தோம்பி குற்றம் கடிதல்
வடுவன்று வேந்தன் தொழில்"
3. "கொலையிற் கொடியோரை வேந்தொறுத்தல் பைங்கூழ்
களைகட் டதனொடு நேர்".

The king should ensure orderly life in society by protecting the rights of his subjects. This point was stressed time and again.

"முறைசெய்து காப்பாற்றும் மன்னவன் மக்கட்கு
இறையென்று வைக்கப் படும்"
"எண்பதத்தான் ஓராமுறை செய்யா மன்னவன்
தண்பதத்தான் தானே கெடும்"

The king should be ever vigilant as far as the rights of the subjects are concerned. In the event of any violation of rights he should act immediately and should not wait for someone to complain.

"நாடொறும் நாடிமுறை செய்யா மன்னவன்
நாடொறும் நாடு கெடும்"

The following Kural makes it clear that there was one kind of appeal to the king's court when the subjects were dissatisfied with the judgement rendered by the lower court.

" வேலன்றி வென்றி தருவது மன்னவன்
கோலதூஉம் கோடா தெனின்"

The story of Kannagi and Pandiya King establishes the fact as to how sensitive and conscious the kings were towards rendering justice. The moment the Pandiya King came to know that by rendering a wrong judgement the life of an innocent had been taken away, he gave up his own life.

The story of Porkaiyan Maran known as Porkai Pandian shows the mportance attached by the Kings to the security of their subjects. It also

shows the primacy given to justice as well as to the verdict of the people. When the subjects and the elders present in court gave the verdict that the hand of the anonymous person who knocked at the doors of the houses should be cut off, Porkai Pandian immediately cut off his hand and earned a permanent place in history.

Right to marry and found a family (Art.16)

According to this Article, men and women of full age without any limitation due to race, nationality or religion shall have the right to marry and found a family. The Sangam literature gives various instances of novel matches among Tamil people. The evil system of dowry was not prevalent during Sangam period. The underlying factor in both forms of marriages - Kalavu and Karpu - was love between men and women Avviyar says -

"ஈதல் அறம் தீவினைவிட்டு ஈட்டல் பொருள்
காதல் இருவர் கருத்து ஒருமித்து ஆதரவு பட்டதே இன்பம்"

In Kurunthogai, we find the following poem

"யாயும் யாயும் யாராகியரோ
எந்தையு நுந்தையி மெம்முறைக்கேளிர்
யானு நீயு மெவ்வழி யறிதுஞ்
செம்புலப் பெய்நீர் போல
அன்புடை நெஞ்சந்தாங் கலந்தனவே"

"What are my mother and your mother to each other?

(no relationship)

What is the relationship between your father and my father?

(no relationship)

"Then how did we come to know each other?

Like the water which falls on fertile fields, our loving
hearts have blended with each other".

I have only chosen a few 'rights' for our discussion. However a study of Sangam literature reveals that in most issues, ancient Tamils had much the same conception of human rights as we do today. Considering the fact that even in England women were afraid to write under their own names until as recently as the 19th century, it is a matter of pride for us that liberalism prevailed in Tamilnadu thousands of years ago enabling women writers to express themselves in their own terms and under their own names. Jane Austen, in the 18th century, published her works anonymously. George Eliot, the author of such famous novels as 'The Mill on the Floss' and 'Silas marner' was the pen-name of Marian Evans. It is the tragedy of English literature that the Bronte sisters, like some of their brilliant predecessors, operated under male pseudonyms.

Now I draw your attention to 2 very important articles in the Declaration namely Right against torture or to cruel punishment (Art.5) and Right to freedom of religion (Art.18). Some critics may point out that minority communities in ancient Tamilnadu were denied both these rights. There are instances of Jains being crucified on 'Kazhumaram'. Critics may say that there was no religious tolerance in Tamilnadu and that the treatment meted out to Jains was cruel to say the least. However throughout the history of the world religion, as a factor, has caused the greatest upheavels. In Europe there were holy wars to establish Christianity. In the middle east and Africa, by show of force millions were converted to Islam. Even today there is conflict between Catholics and Protestants in the Irish territory of the United Kingdom and between Muslims and Jews in and around Israel. In fact it was this state of affairs that chiefly necessitated the incorporation of Articles 5 and 18 in the Universal Declaration.

My purpose is not to justify to cruel treatment of Jains in Tamil society. On the contrary, I refer to the climate of religious intolerance which characterised much of the ancient and medieval world and continues to plague the modern world, and I merely state that Old Tamil society was no exception to this.

APPENDIX

UNITED NATIONS' UNIVERSAL DECLARATION OF HUMAN RIGHTS

ARTICLE 1

All human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood.

ARTICLE-2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, brith or other status.

Further more, no distinction shall be made on the basis of the political, jurisdictional or intenrational status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

ARTICLE-3

Everyone has the right to life, liberty and security of person.

ARTILCE-4

No one shall be held in slavery or servitude. Slavery and the slave trade shall be prohibited in all theri forms.

ARTICLE-5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE-6

Everyone has the right to recognition everywhere as a person before the law.

ARTICLE-7

All are equal before the law and are entitled without any discrimination to equal portection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

ARTICLE-8

Everyone has the right to any effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law.

ARTICLE-9

No one shall be subjected to arbitrary arrest detention or exile.

ARTICLE-10

Everyone is entitled to full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE-11

1.Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Not shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

ARTICLE-12.

No one shall be subjected to arbitrary interference with his privacy,

family, home or correspondence, nor to attacks upon his honour and reputation. Every one has the right to the protection of the law against such interference attacks.

ARTICLE-13

1.Everyone has the right to freedom of movement and residence within the borders of each state

2. Everyone has the right to leave any country, including his own, and to return to his country.

ARTICLE-14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations.

ARTICLE-15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

ARTICLE-16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and its dissolution.

2. Marriage shall be entered into only with free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

ARTICLE-17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

ARTICLE-18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

ARTICLE-19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE-20

1. Every one has the right to freedom of peaceful assembly and associaton

2. No one may be compelled to belong to an association.

ARTICLE-21

1. Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.

2. Every one has the right or equal access to public service in his country.

3.The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ARTICLE-22

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

ARTICLE-23

1. Every one has the right to work to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Every one, without any discrimination, has the right to equal pay for equal work.

3. Every one who works has the right to just and favourable remuneration ensuring for himself and his family an existence worth of human dignity, and supplemented, if necessary, by other means of social protection.

4. Every one has the right to form and to join trade unions for the protection of the interest.

ARTICLE-24

Everyone has the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay.

ARTICLE- 25

1.Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family,including food, clothing housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance,. All children, whether born in or out of wedlock, shall enjoy the same social protection.

ARTICLE-26

1. Everyone has the right to education. Education shall be free, atleast in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strenghthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

ARTICLE-27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific literary or aritistic production of which he is the author.

ARTICLE-28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

ARTILCE-29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirments of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purpose and principles of the United Nations.

ARTICLE-30

Nothing in this declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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9 LITIGATION

M.Rajendran

"Litigation" is invoking the aid of a court or a tribunal to settle a dispute. In early Tamil Literature courts were referred to as "Aram Kooru Avaiyam" (அறங்கூறு அவையம்). "Sirantha Kolkai Arangkooraviyam" (சிறந்த கொள்கை அறங்கூறவையம்) is the phrase we meet with in Madurai-k-kaanji.

Parimelazhakar, the famous commentator of Tirukkural, says: "Dispute stems out of the claim when each contestant affirms that the ownership or possession of a thing is his own. It relates to eighteen types in which debt is also included " (வழக்காவது ஒரு பொருளைத் தனித் தனியே எனது எனது என்று இருப்போர், அதுகாரணமாகத் தம்முன் மாறுபட்டு அப்பொருள் மேல் செல்வது. அது கடன் கோடல் முதலிய பதினெட்டுப் பதத்ததாம்).

Many suffer from the wrong conception that entire legal system is a British legacy. Our system had, no doubt, borrowed many ideas from the British jurisprudence. For instance, in our system, the innocence of the accused is taken for granted, until the contrary is proved. So, the benefit of doubt legally ensures in favour of the accused.

This concept is not Indian in origin. In Tamil Nadu, a different system - at once saner and more profound - obtained.,

The British system followed a practicable and not an ideal concept. It would rather allow a hundred criminals to go unpunished than punish one innocent person. The system of the Tamils did not subscribe to this view. It held that no innocent person should be punished and that no criminal should go unpunished. In fine, the Indian system aimed at perfect dispensation of justice.

The Tamil legal system took care of everything pertaining to the legal procedure. Conveyancing was cultivated as a fine art. Only proper and competent men could act as members of the Jury. Judges were known for their rectitude and integrity. Strict rule of procedure were followed in the courts of Law. Provisions for examination and cross - examination were available. Forums for Appeal were there to correct erroneous judgements. In the main, the golden rule of interpretation which lay emphasis on biteralness, was follwed. The King was the ultimate head of the Judiciary. He strained every nerve of his to arrive at the true verdict. His very Scepture was a symbol of inviolable Justice.

The various aspects of litigation, namely, the principles to be borne in mind in administering justice, the rules and regulations governing the methods of enquiry and investigation, the presentation of plaints and

complaints, the modes of letting in evidence - primary and secondary - ., the transferring of cases from one court to another, the power of court to send for documents and all other related matters, can be gathered, inter alia, from such Tamil works as the Tirukkural (the chapter on sengkonmai etc.,) the Silappathikkaaram (Vazhakku Uraittha Kaathai), the Puranaanooru (verse number 184), the Periya Puraanam (Thadutthu Aatkonda Puraanm) and the Thiruvilayaadal Puraanam (Pazhi Anjiya Padalam, Maamanaaka vanthu Vazhakkuraittha Padalam, Darumikku - p - Porr Kizhi Alittha Padalam, Sangkatthaa Pazhi Teerttha Padalam etc).,

The ancient Tamil bards played an important role in the maintenance and promotion of justice. Dr.pope calls Tiruvalluvar "the Tamil sage and Law - Giver". His famous Kural which says: "Due and proper investigation, steadfast adherence to uprightness and impartiality, an irreproachable appraisal of the points of law and facts and the announcement of a just and enforceable verdict characterise the administration" sizes up in a few words the quintensential nature of law as well as justice.

The above Kural begins with the word "Ornthu" (ஓர்ந்து). Today found inscribed above the seat of every judge in every Court, as a mural, moral and legal adornment.

Poets like Tiruvalluvar had never failed to admonish kings who were prone to err. Pisiraanthaiyaar felt it to be his duty to administer a proper corrective to the erroneous policy of a king who imposed on his subjects an unbearably heavy tax. The bard dwelt on the advantages that would ensue from benign and moderate taxation. He explained this by a telling illustration. Grains duly harvested and stored, could be used to appease the hunger of a tusker for many a days. If, however, the tusker was suffered to invade the field on the eve of harvest, it would indulge in devastation and eventually will spoil everything. Untold waste would be the ultimate result. This apposite illustration, deflty employed by the bard, brought home to the king the danger that burked behind impolitic taxation.

The Periya Puraanam contains a mine of information pertaining to Law and legal procedure. The modes of proof provided under the ancient law were: (i) Proof by precedent, that is, by custom of immemorial antiquity, (Aatchi), (ii) by documentary evidence (Aaavanam) and (iii) by oral testimony of eye witnesses (Ayalaar tham Kaatchi). That precedents are entitled to legal respect, is proposition which is well established. Custom too has the force of an established precedent. Salmond holds that custom has the force of law and says "Custom is to Society what Law is to State".

Chapter V of the Indian Evidence Act deals with the modes of

proof which are very similar to those prescribed by the Periya Puraanam. This puraanam deals with many a point touching the procedure of Law which obtained during the days of the great Cholas. The concept of `res Gestae' was not new to the old Tamils. They were well aware of the procedure relating to primary and secondary evidence. The respective values of original documents and certified copies (moola olai and padi olai) were well known to the litigants. The court was referred to as `Maatchi' - a respectable term of address like `Your Honour`` and ` Your Lordship'. Each court had a clerk or clerks to render ministerial assistance. The clerk was known as `Karanatthaan". Ancient documents were entitled to greater worth. ``Thonmai nokki" is a significant phrase which occurs in the Periya puraanam. Converyancing was at its best in the good old days. The document which clinched the bondage of Sundarar read thus:

``I, Aarooran, Siva-Brahmin, of Naavaloor, do hereby execute this deed (Arumarai Naaval Aadi Saivan Aarrooran Seikai) unto perumuni of Vennainallor alias Pitthan (Perumuni Vannainallor Pitthanukku) and declare that I and my legal representatives (Yaanum enpaal Varumurai marabulorum) do hereby bind ourselves hereafter for generations to come, to render perpetual service to the said Perumuni (Vazhitthondu Seitharku) by means of this bond of which I am the Scribe with full and free consent (Olai irumaiyaal ezhuthi Venthen)., in witness where of I have set my signature to this deed (Itharku ivaien ezhutthe)".

The existence of a Record Office is also referred to in the Puraanam. Comparison of Signatures (oppu nokki) was a recognised mode of proof. The Principle of ``Audi alteram partem" (hear the other side) was followed by the court. Just and quick disposal of the case was the rule. There was also provision for transfer of cases from the file of one court to another.

The Indian Penal code declares that only when means rea guilty mind) and actus rea (quilty Act) co-exist, an act becomes a crime. Long long ago, Thiruvalluvar declared the importance of these two ingredients.

"மனத்தானாம் மாந்தர் செய்யாமை தலை" are the wise words of the sage who also admonished thus: *"செய்யற்க சான்றோர் பழிக்கும் வினை" (குறள் 317)*

A law-abiding citizen should ever shun the company of the unruly and the unwise. It is thus a man keeps his heart pure. Whatever he does, it turns out to be a good and lawfull act. ``Purity of heart and purity of action`` says Valluvar" depend upon the purity of a man's action ``. The Tamil Kural says:

"மனந்தூய்மை செய்வினை தூய்மை இரண்டும்
இனந்தூய்மை தூவா வரும்" (455)

Besides literature much can be known from inscriptions about,

Law, Justice and Courts.. A close scrutiny of these inscriptions brings to light the procedure adopted by the Courts. As observed by Dr. R. Nagaswamy, most of the inscriptions are to be deemed legal documents. They bear testimony to rights of possession and ownership. They embody legal rights and remedies of individuals and communities. They served as public documents even though they safeguarded the rights of private persons and institutions.

A series of articles by Kudavaayil Bala Subramanian appeared in the journal `Mutthaaram'. These related to the settlement of disputes by courts of law during the days of the Cholas. The facts and the verdict are found enshrined in inscriptions. An inscription of the Acchuthamangalam Siva-Temple speaks to the fact that enhanced compensation was awarded by courts to persons whose lands were acquired.

An inscription of the year 1225, (Tirucchaanoor) speaks to the revival of a rule relating to the law of succession which stood suspended for 217 years. Pinai Olai (Surety-bond) was in vogue during the times of the early Cholas. An inscription of the year 917 AD speaks of this.

In England, during the last century, no arrest could be effected on the Sabbath Day. In our country too, no arrest could take place on such days as the sangraanthi, pradamai and pournami. We learn this from Kaveripaakkam inscriptions.

During the days of the Chola monarchs, the village assembly also acted as a court. It played a vital role. It carefully preserved the public records. Erroneous verdicts could be corrected on appeal. The king in council acted as the apex Court.

Copper plates also preserved many facts relating to forensic matters. Velvikkudi grants and Dalavaapuram grants are excellent legal records.

The Chola monarchs were compassionate judges. They tempered justice with mercy. When circumstances warranted, the severity of punishment was alternated. Rajendra Chole II did not award capital punishment to a murderer who killed his only brother. The king did not desire the innocent father to become sonless.

Much valuable information relating to Civil and Criminal litigation in ancient Tamil Nadu is evident in the form of literature, inscriptions and copper plates. A proper investigation is yet to be made. If it is undertaken in the proper spirit, we will come by such material that is bound to made us feel legitimately proud of our ancient ancestors.

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9

16 A VIEW ON CRIMES AND PUNISHMENTS IN CANKAM LITERATURE

R.JOTHIVANAN

INTRODUCTION

In all the languages of the world, only a few can lay claim to their hoary antiquity, fame, fertility of invention and culture. The Tamil Language according to great savants, is one such. It has inherited a rich and unique literature which is vertible repository of the wisdom of Tamils. The poems, composed by various versifiers and compiled after Tolkappiam (old composition, a work on grammar) are available today in the form of two famous voluminous collections, Pattu-p-pattu (The Ten Idylls) and Ettu-t-tokai (The eight Anthologies). These are often collectively called "Cankam Literature". Scholars agree that the litarature is the mirror of the age. So, cankam literature reflects the social, economic, political and judicial state of the ancient Tamils. A separate code for legal system of the Tamils is not available now because many manuscripts on various fields, were destroyed by white ants, fire, deluges and the ravages of time. We have no other go except to resort to the literary references to find out the criminal system adopted by the ancient Tamils. In this treatise" A view on crimes and punishments in Cankam Literature" and humble attempt is made to focus a few literary references on the legal system of the Tamils.

1. MORAL LAWYERS

Cankam Poets, Pulavars were erudite scholars with good character. They were honoured very much by the kings. The Pulavars had right to interfere even with the king's personal matters. Like a teacher they used a teach good morals to the kings. This fact is evident from the "Chevi Arivuru-t-turai", one of the divisions of Padantinai which is one of the seven classifications of Pura-t-tinai, dealt with by the ancient grammatical work, Tolkappiam. The term Chevi-Arivuru means that the pulavars may teach morals to the kings, hence we say that the pulavars were the moral lawyers of those days. A few literary references may be cited to illustrate this statement. Kovurkilar, an eminent poet rescued, two children of Malaiyaman, a cheiftain, from being killed by the king, Killivalavan. (Puram 46)

The same pulavar rescued another pulavar Ilantattan from being killed by a king Nedunkilli who had misunderstood him as a spy.

Similary pulavar Velvi-K-Kudi Nakanar advised the King to save the people from the cruel officials in the matters of tax collection during the times of drought (Puram 35).

2. DEFINITION FOR MURAI

According to the opinion of the pulavars a king should find out the underlying truth of a case, placed before him and give a correct judgement wihout any discrimination. That is justice. The administration of justice is the primary duty of a king. He should protect his people from the fear of murder, robbery, rape etc. One who has committed a crime, should be punished by the king without any discrimination. This feature of the king, is termed as Aram, Araneri, Murai by the pulavars. The following lines of the pulavar Marutanilanakanar, bear ample evidence for this.

Araneri Mutarre Arasin Korram

Namar Ena-k-kol-kotatu

Pirar-Ena-k-kunankollatu (Puram 55)

These lines mean that a king should not leave a culprit unpunished because he happens to be his kin and should not punish a person without considering his merits because he happens to be a stranger. The success of a king is based upon this primary virtue.

Pulavar Nallanduvanar in Kali-t-tokai expresses the same idea in the following line:

'Murai Ena-p-patuvatu Kannotatu Uyir vawal'-

This means that king should order the sentence of death to culprit without discrimination. Thiruvalluvar also cites this as the quality of a good king in the following lines:

Murai Ceytu Kapparrum Mannavan Makkatku
Irai Enru Vaikka-p-patum. (Kural-388)

A king with a balanced mind rendering justice and protecting his people is respected as god to them. Hence the maxim set by all the pulavars is that a king should punish the criminals without any discrimination and render justice. This maxim is the primary in the legal system. Even the modern jurisprudence is based upon the maxim, that all are equal before law:

A few references of the crimes and punishments found in Cankam literature are given below:

3. OFFENCES AGAINST THE KING:

(a) Dishonouring the protected things of a king was an offence.

A pulavar by name Moci Kiranar came to the palace of Perunceral Irumporai. He was very tired because of his long journey in the sun. Inside the palace he saw a beautiful cot covered with soft cloth and adorned with flowers. He slept on the cot because of his tiredness.

After a while he woke up from his deep sleep and saw the king fanning him. He was shocked and stunned on realising his offence of sleeping on the 'Murasu-k-Kattil' which was the bed for the victory Murasu (a kind of drum). The kings were very particular in safeguarding the sacredness of the Murasu-k-kattil. Nobody should dishonour the murasu-k-kattil by footing or sleeping on it or committing any other form of deed. Mocikiranar was not aware that it was murasu-k-kattil because the murasu was taken away by the soldiers to the river for its bath. If any other person had committed this crime, the king would have cut him into two pieces by his sword. Mocikiranar was spared because he was a Pulavar. This was an exception. Exception is not a rule, we can realise from this that if anybody dishonoured the protected thing of a king, he was liable to be punished with death. (Puram:50) The ignorant act of the pulavar was excused by the king. Even in the modern jurisprudence a person deserves punishment only if mensria is proved.

b) Consuming the yield of plants in the protected area of king was an offence

There was a mango tree on the bank of a river. The king Konkanavel Nannan protected the tree carefully with the help of soldiers because the tree would yield only one mango once in many years. A woman who went to the river to take bath, found a mango floating in the floods of the river. Without knowing the fact that the mango belonged to the king, she ate it. On knowing this, the king Nannan ordered his soliders to kill her. On hearing the news, the close relatives of the woman, prayed to the king that they were prepared to give eightyone elephants and a golden statue equal to the weight of her as a fine for her offence. But the king rejected to accept the compensation and the death sentence was executed. This act of the king was not nourished by any Pulavar (Kuruntokai 292). He was blamed and referred to as Pen Kolai Purintha Nannan. There was no intention on her part to commit that offence. Since the act of the king went against the principle of mensria for punishment. The king, Nannan, suffers ignoming in the annals of Tamils. From this reference, we may also infer that fine was also a punishment in those days. Limitless anger, limitless lust, severe punishment etc. are the hindrences to the good Government of a King. (Patirru-p-pattu 22)

Spying was an offence

A Pulavar by name Ilantattanar went to Uraiyur, the capital of king Netunkilli to receive appreciation and awards for his poems. But the king suspected him as a spy of his enemy Colan Nalankilli. So, the king wanted to sentence him to death. But, the pulavar Kovur Kilar pleaded with the king and rescued him from the death sentence. (Puram:47) This reveals that the spies were awarded with the sentence of death.

d) A son attempting to wage a war against his father, King was an offence ;

Colan Porvai-k-kopperunar Killi, was the son of the king, Tittan. Some mischievous persons misrepresented to the king that his son was attempting to wage a war against him by collecting arms. The king believed their words and ordered his soldiers to imprison him, for awarding with the sentence of death. But the son escaped from there and lived in a forest. Even consuming the rice of a kind of a grass in the forest he had very strong shoulders. A woman poet Nakkannaiyar praises him in the following lines:

"En-I, Purkai Undum Peruntolane." (Puram:84)

Further she tells that his dwelling place at that time was neither his own village nor his own country (Puram-85) Kopperunarkilli absconded from his own country to escape from the punishment of death. This reference is comparable to the section 121 of I.P.C. which runs as follows. "Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine".

4. OFFENCES AGAINST PROPERTY

a) Theft: The word Kalavu in Cankam Literature indicates the offence of theft and robbery. The word 'Kalvan' refers to a thief or a robber. We come across many references about Kalvar (Plural for Kalvan) in Cankam literature. The word Kalvan is also used as a simile when a heroine refers to her hero in Akam Literature (Akam deals only with the love affairs of a hero and his heroine) A heroine says that her lover wishes to undertake a voyage to foreign country to earn money without knowing the fact that she will not bear his separation. So, she compares her lover to a cruel robber. "Kalvar Pola-k-kodiyan-Mato". (Narrinai - Paalai - 28)

b) Paranar, a poet, describes one main quality of a thief in his poem. The thief will enter a well protected house with carefully measured slow steps lest the noise made by his steps may be heard by the inmates.

"Narai Tan
Adi Arutal Anji Paipaya-k-
Kadi ilam Pukum Kalvan Pola" (Akam-Marutham-276)

c) A thief who is capable of removing the property from a person even in front of his eyes, is referred to as Kankutti-k-Kalvan" (Kali-t-tokai Mullai.8). Further Kali-t-tokai brings out a point that a thief will have the cleverness of watching the property of others without their knowledge. We have references about burglars. The burglar makes a big hole through the wall to enter the house in night. Before entering the house he throws

slowly through the hole; a false head made by mud or wood to watch the response of inmates. The punishment for the theft was death. In Cilappatikaram we come across Kovalan accused as a thief by the Head Goldsmith of the palace. The king believes his statement and sentences Kovalan to death. (Cilambu, Kolai-k-Kala-k-kaatai)

d) There are many references in Cankam literature about "Aralai-Kalvar" the decoits who rob the passengers on the highways in Palainilam which is an arid tract. The literature describes them in the following lines: The Aralaikalvar have strong body with cruel look like a tiger. They have bows hanging from their shoulders and sharp edged arrows on their back. Their dress as well as their eyes are red. They sit upon the branches of highly grown up 'ya' tree to watch the new passengers coming on the highways of forest. They rob the properties of passengers in that deserted place. They enjoy the sight of their trembling. The passengers are murdered even if they do not possess any property.

e) It is surprising to know that the Aralaikalvar have to rob from the passengers who pass accross the Palai Nilam. Even if the passengers do not possess any property, they must be killed. If any robber allows a passenger to go alive out of mercy, that robber should pay ivory and skin of tiger to his chieftain as a fine for the offence of allowing the passenger to escape alive. (Akam-109)

Another kind of Maravar, the people who live in Palai Nilam rob the herd of cow. They produce noise from a kind of drum when they proceed to rob. (Akam-63)

These references are comparable to sections 378, 390, 391 (Theft, robbery and dacoity) of I.P.C.

5. OFFENCES OF GRIEVOUS HURT

A lady by name Anni minili sent his father to the fields with his cattle for grazing. A cow entered a field and grazed leaves of green dhal crops of his enemies Kosar. They plucked out the eyes of the father in a cruel manner. On knowing this the daughter got very angry. From that day she stopped eating and wearing clean dress. She sat under a banyan tree in the middle of the village, seeking justice from the king. The king came to know about the case and sentenced Kosar with death for their offence. After this she got pacified (Akam 262) Section 320 of I.P.C. describes about grievous hurt in the following lines. The following kinds of hurt only are designated as grievous:-

First - Emasculation:

Secondly - permanent privation of the sight of either eye.

In the above case, the second offence is committed by Kosar

voluntarily causing grievous hurt to the father of Anni-Minili. The punishment was death. Today according to I.P.C. (325) punishment is imprisonment for seven years and fine.

6. OFFENCES RELATING TO WOMAN

(a) In a village named, Kallur, a young lady was raped by a immoral person. The village court assembled and enquired about the offence. He said that he had not seen that lady at all. But from the available evidence the court came to a conclusion that the person had committed the offence of rape. As per the order of the court the person was tied to a huge branch of a tree with rope and ashes were scattered on his head in front of a big gathering who ridiculed him with shout and laughter. (Akam - 256)

This reference gives an idea about the offence of rape and the punishment awarded for it. But for this no other reference is found in Cankam Literature. Probably the great poets might have avoided to quote such offences.

b) Women hailing from high castes were not allowed to marry twice. (Kali-t-tokai 113) Bigamy was not an offence for men. Today according to Sec. 494 of I.P.C. Bigamy is an offence for both men and women.

7. EVIDENCE

To decide a case, evidence is an important aspect. Tamils had known the importance of evidence.

"Arikari Poyttal Anror-k-Killai" (Kuruntokai - 174)

This means that the good persons, will never tell a lie in the court. The literature states that a tree, below a person who gave a false evidence will wither.

"Kari Poyttan Kilirunta Marampola-k-kavinvadi" (-Kalittokai-Palai-34)

So the Tamils had a good knowledge about evidence.

CONCLUSION

The ideas found in Tiru-k-kural are reflected in Cankam Literature in many places. Hence, a Tirukkural may be quoted here as a conclusion.

"Kolaiyil Kodiyarai Ventoruttal Painkul

Kalai Kattadanodu Ner (550)

The meaning is as follows : The king punishing a murderer is similar to a farmer removing of the weeds from a paddy field.

Parimelalakar, a famous commentator of Tiru-k-kural, while dealing with the kural 550 speaks about crimes and punishments. In the said kural a word 'Kodiyar' is used by Tiruvalluvar. Parimelalakar states that 'Kodiyar' means the criminals who commit the offences of firing, poisoning, murdering with weapons, stealing, robbing, dacoiting, adultery etc., Death sentence is the punishment awarded to these criminals. The kings might have followed the code by convention or prescriptions found in moral books like Tiru-k-kural. The king is the supreme authority of the country.

The court, occupied by great persons who are free from fear, grief, curiosity, favouritism and having a neutral disposition like a balance, is known as "Aran Kuru Avaiyam". (Pattu-p-pattu, Maturai 496-99)

This is the place where justice is rendred. The rendering of justice is called Murai. "Cenkol", a cane held up erectly by a king, is a symbolic of rendering justice.

The poet Orampokiyar blesses a king in the following lines. "Arasu Murai Ceyka, Kalavu Illakuka" (Ainkurunuru, Vetkai-8)

This means that there should be justice and there should not be theft in the country.

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CUSTOM: A SOURCE OF LAW FOR ADMINISTRATION OF JUSTICE

S.Shantakumar

CUSTOM is an important source of law not only during the olden days but also during these days of modernity. Customs lie in the foundation of all legal systems. They come into existence with the existence of the society. Custom is to society what law is to state.

A study of ancient Tamil society shows that law-making was not the business of the kings. Law of the country was to be found in the customs of the people. The people were accustomed to a particular way of living and doing things and that was to be found in the customs of society. *The kings were anxious to rule the people according to the* popular notions of right and those were to be found in their customs. Later on the same custom was recognised by the sovereign, by putting his imprimatur on it. It was in this way that custom was transformed into law. Custom was vague in the beginning but it became definite and concrete with the passage of time.

The Judicial committee of the Privy council has defined custom as a rule which in a particular family or in a particular district has from long usage obtained the force of law. In one case[1] custom was describedin thse words: "It is jus non scriptum and made by the people in respect of the place where the custom obtains. For where the people find any act to be good and beneficial and apt and agreeable to their nature and disposition they use and practice it from time to time and it is by frequent iteration and multiplication of this act, that the custom is made and being used from time to which memory runneth not to the controry obtains the force of law".

While this is the importance accorded to custom as source of law both at national and international levels, in India prior to the advent of the British the Hindus were governed by their own laws. The Hindus had their own system of laws which as acknowledged by the Smritis were based mostly on customs that were prevailing in the society during the days of the Smriti writers.

In Tamil Nadu there was no public system of law during the Sangam age and custom, as various as the tribes, regulates everything in the Tamil society. Every caste had its own ancient customs. The Tamil society of those times was basically a tribal one on which, by contact with Northern Brahminical communities a varna scheme was imposed in a somewhat indifferent manner. The Brahminical tendency to keep aloof and the tribal tendency to sanskritize cancelled each other and the

Dharmasastras eventually concerned only the Brahmins, and for the rest of society their validity was purely theoritical.[2] The rules of civil ownership of property for the non-brahminical sections were derived largely from social traditions and customs. Each family in a locality followed its own customary law which was never codified or committed to writing.[3] In the Tamil society loyalty to the Dharmasutras was in many instances nominal and they were supplemented by the local custom. For example, expliation for crimes by endowment of perpetual lamps to temples was not the kind of adonement contemplated by the Dharmasastras: but medieval inscriptions especially those of the Cholas, are full of references to such practice.[4]

An inscription copied by the Tamil Nadu State Department of Archealogy throws some light on the administration of Justice in Medieval period.[5] The epigraph comes from the agniswara temple of Tamaraipakam and belongs to 11th century A.D. It is dated in the reign of Rajendra Chola II. The history of the case is briefly as follows: Two brothers of a family quarrelled among themselves. The elder brother slapped the younger who retaliated and as a result the elder brother died. The father of them took the case to the Guild. The Guild enquired into the case and delivered the judgement that since the family has fallen into troubles and there was none to protect the parents and as the parents own no property, the younger son was ordered to provide for half of a perpetual lamp to Lord Mahadeva of Thiru.Agnisvara, in Thiru Thamaripakam. The younger son was also ordered to protect the aged father and mother. The Guild, in this case, took a sympathetic view of the case. The parents neither had property nor children or relatives to look after them. The Guild considered it sufficient if the offender was punished to burn a perpetual lamp in the local temple by paying certain amount which incidentally also served as an expiatory rite.[6]

"The association of penances with punishment for crime, is itself a recognition of the distinction between the reparation or compensation aspect or the punishment or reformation aspect. According to the Svadharma theory, a crime being a deviation from the offenders dharma involved not merely harm to society but also degradation or less of caste to the offender and thus made him (1) unworthy of social communion and (2) unfit to perform spiritual acts. Hence arose the necessity for expiation."[7]

There are also other instances to show that the administration of justice in the Tamil society supplemented local custom for the principles enshrined in Dharmasutras, while awarding punishments to the offenders. For example, when a merchant of Jambai had a concubine whom a native of Navalur (Tirunamanullar) attempted to outrage the latter was stabbed to death by merchant and as the offender was dead he could

not be prosecuted for his alleged misconduct of attempted adultery. The merchant, along with a relative of the deceased endowed gold for a lamp in the temple by way of expiation.8

Similarly when a Nadalvan killed the Commander of a regiment of bowmen, Rajendra II ordered the culprit to endow a lamp to the temple.[9] Also, when a husband pushed his wife so rudely, that she died and the "1500 men of the four quarters' tried the case and found the husband guilty of murder. But he had only to provide a perpetual lamp in a temple as punishment for the crime.

When a thing is practised for a long time it gives rise a rule of law known as custom, but if it gives rise to a right it is called prescription. A custom is a source of law, but a prescription is a source of right. On account of the similarity between local custom and prescription they were both bracketed under the heading of a particular custom and prescription was regarded as a branch of custom. Prescription was considered as a particular custom confined to an individual.[11] This principle of law was given recognition by the Tamil kings and they, while administering justice treated the prescriptive right as customary law and settled the disputes brought before them. For instance during the days of Maravarman Sundara Pandya, there was a dispute between the inhabitants of Kulattur and the temple trustees on the one hand and a certain Vikrama Chola Nadalvan (Land holder) on the other, regarding the ownership of a channel and the rights of fishing in it. It was agreed, on arbitration, that water might be haled out within the specified boundary limits, that half of the taxes on fishig were paid to the temple and other half to the Nadalvan.[12] Similarly there was a dispute among the Bhattas of a temple near Kattumannar Koil, of South Arcot regarding the right to perform pooja in the temple. The Assembly artibtrated. One party pleaded prescription and claimed to have enjoyed the right from the time of Kulottunga II. How the dispute ended is not known. What interests us in both the cases is the judicial recognition of prescription as a title to ownership or a right.[13] Yet another interesting case if drawn from an epigraph from Tamil country dating back to 8th-9th century A.D. This epigraph relate to the early Pandya period and is known as the Velvikkudi Grant[14] of Parantaka Neduncadaiyan. It consists of two parts, the Sanskrit and Tamil parts. The Sanskrit portion stops with the listing of the geneology of Parantaka. The tamil part begins straight away with the details of the appeal - that the village Velvikkudi, was gifted to one Narkorran also known as Korkai Kilan by the Pandya ruler, when he completed a yaga (velvi). It is said that the village was in the long possession of the Donee (Nidu Bhukti Tuyttapin) when the Kali king named Kalabhra, who overthrew a number of rulers (Adhirajas), deprived the donees of the enjoyment of the village.

A descendant of the donee, whose name is given as Korkai Kilan Kamakani Narasinghan, went to the palace of the Pandya ruler, Parantaka Nedunjadaiyan at Koodal and shouted at the outskrits. The King himself heard this appeal, called him in, and enquired into the matter. The appellant told the king that after they were deprived of thei enjoyment six Pandya rulers have passed away. "This land was given by your ancestor Mudukudimi Peruvaludi. The name of the village is Velvikkudi situated in Pakanurkurram. This was removed by the Kalabhras" appealed Narasinghan. On hearing this the king asked the appellant to produce evidence that this was actually in their possession. There upon the appellant proved his right of prescription over the property. The king having satisfied himself, ordered at the spot itself that the village gifted by his ancestor was reconferred by him as well. This Copper plate shows how the Tamil Pandya king administered justice taking into account the customary right of the affected party.

Even during he advent of the British and during their rule over the Tamil society one could find that much importance was given to customary law for administration of justice. We have a most important witness, the Jesuit Missionary Father Bouchet, who lived for many years in the Tamil countries.[16]

In 1714 he wrote a long letter from Pondicherry to a Magistrate of high rank in France,for the purpose of informing him as to the law and admninistration of Justice in the countries in which he was serving. In that letter, which will be found in the "Letters curieuses et edifiantes", Vol.XIV, occurs the following passage; "Ils ont ni code ni digeste acuun Livre ou soient ecrites les liix ausquelles ils doirent se conformer pour terminer les differences qui naissent dans les familes". The wirter then goes on to say that the natives have the Vedas in four parts, which they call "the divine laws" but it is not from the Veda that they "draw the maxims that serve as rules for their judgements", and they do not think of following the method of these sages, however much they may admire them. Also the natives have their ancient poets, who professed to teach morals, but they do not base the principles of their decisions on what their poets have written. What they rely on what "all the equity of their judgements is founded upon," is certain inviolable customs and usages handed down from father to son and regarded as "regles certains et infallibles pour entrdtenir la paix des familles, et pur terminer les procez qui selevent, non seulement entre les particuliers, mais encore entre les Princes". Custom, he says, was everything, and argument was used in vain to those who in all disputes had but one thing to say, "It is the Custom".

With regard to the role of custom in the administration of justice in recent times, it will be appropriate to cite here an important judgement

15 of Madras High court in a case[17] in which it has held that "Custom is the parent of personal law in each country and even in India, which is a land of diverse customs of families, castes and territories, custom is the most important source of Hindu Law under whose system clear proof of usage will outweigh the ancient text." The court further declared that "the duty of the Court is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities as to ascertain whether it has been received by the particular school which governs the District and has there been sanctioned by usage. For under the Hindu system of law, clear proof of usage outweights the written text of the law." This judgement of the Madras High Court explains the importance of custom in the administration of justice by the modern courts created under our Constitution.

The Madras High Court in yet another case[18] has laid down valuable propositions as regards the nature and quantum of proof of custom. They are :

I. The evidence should be such as to prove the uniformity and certainty of the usage and the conviction of those following it that they were acting in accordance with law and this conviction must be inferred from the evidence.

II. Evidence of the acts of the kind, acquiescence in those acts; decisions of courts, or even of Panchayats, upholding such acts; statements of experienced and competent persons of their belief that such acts were legal and valid, will all be admissible; but it is obvious that although admissible, evidence of this latter kind will be of little weight, if unsupported by actual examples of the usage asserted.

In order that the general law may be overridden by proof of custom, the evidence must satisfy the court that the majority atleast of the given class of persons, look upon the customary rule put forward as binding.

From the above, one has to admit that it will not be an exaggeration to say that the modern jurisprudence has inherited to some extent, the legal systems of the Tamils. The Tamil soil has not only been productive of deep thinkers, eminent and gifted poets, but it has brought forth a system of law on par with the other systems existing elsewhere in the world.

Nothing is better capable of illustrating the degree and kind of culture attained by a nation that its laws and usages. The cultured civilization of ancient Tamil Nadu at a period, far in the remote past when the other nations of the world were merged in abysmal ignorance and rank barbarism, is indeed marvellous.

Hence, every member of the Tamil society, both past and the

present, can remain proud of the excellence of the Tamil jurisprudential system and the practical wisdom and equity that were inherent in the laws by which the ancient Tamils were governed.

Foot Notes

1. Tanistry Case 30 E.R.516
2. Rajalakshmi.R.,Tamil Polity, (1983) p.124
3. Ibid
4. Ibid. p.125
5. Nagaswamy.R., Studies in Ancient Tamil Law and Society, (1978) p.75.
6. Ibid., p.78
7. Varadachariar.S., The Hindu Judicial System, (1946) p.218.
8. Rajalakshmi.R., Tamil Polity, (1983) p.132
9. Ibid.
10. Ibid.
11. Mahajan. V.D., Jurisprudence & Legal Theory, (1987) p.273
12. Rajalakshmi. R., Tamil Polity, (1983) p.273
13. Ibid. pp. 135 -136.
14. Epigraphia Indica Vol.XVII pp.291-309.
15. Nagaswamy.R., Studies in Ancient Tamil Law and Society, (1978) p.3.
16. Nelson J.H., Hindu Law in South India in Origin & Development of Legal and Political System in India., Vol.I. Ed.H.S. Bhatia, 1976, p.96
17. Collector of Madura Vs Moottoo Ramalinga, 12 MIA 397.
18. Gopalayyan Vs Raghupatiayyan, 7 M.H.C.R. 250.

7

THE DEVELOPMENT OF CONSTITUTIONAL LAW IN THE AGE OF THE GREAT THIRUVALLUVAR IN TAMIL NADU.

Dr.C.Ramakrishnan (Judge)

1. The Sangam age is said to have flourished broadly between 5th Century B.C. and 5th Century A.D. in Tamil Nadu. The Sangam age further deserves to be divided into Early Sangam age, the age of the Great Thiruvalluvar and finally the age of Epics. Though it is not possible to give the exact outer limit to the Early Sangam age and the Age of the Great Thiruvalluvar, still it is possible roughly to fix the outer limit at 2nd Century A.D. Both the ages put together lasted from 5th Century B.C. to 2nd Century A.D.

2. For the purpose of Legal concepts and development of Constitutional Law the two ages are important because the Tamils were largely independent in those ages and mainly they have been free from alien influences and were able to build up their own civilization with good Governments and with the system of legal and judicial administration and were quite capable of developing a higher law and fundamental principles and great Traditions over the Oridinary Laws and Rules and customs. The Early Sangam age had given birth to the legal and moral principle namely the soveriegn power of the State is based on Social Justice and certain well established legal concepts and Institutions arose around the Rulers and Peoples.

3. During the height of the Early Sangam age there appeared on the hoizon the greatest thinker and philosopher, the world has everseen. He is the Great Thiruvalluvar who should be known to the world as the greatest philosopher of Law. He is the Authour of Thirukkural which richly deserves to be discribed as the first, monumental document containing great constitutional principles and mandates besides social economical and political pragmatic principles of immense value. The fundamental principles enunciated by Thiruvalluvar have guaranteed equality justice and human dignity to all men. The Early Sangam age and the age of Thiruvalluvar can be rightly described as golden age in the history of Tamils. Thiruvalluvar was the soul of Tamil Nadu and to certain extent he was the soul of India and the whole world. He was a genius of world renown. Thirukkural produced by this great man has been hailed as the Bible of mankind.

THIRUKKURAL IS A CONSTITUTION

4. According to the K.C. Whearean authority on Constitutions the history of the world shows that the word Constitution is commonly used in atleast two senses in any ordinary discussion of political affairs. In the

narrower sense the constitution is a selection of the legal Rules acceptable to the people which govern the Government of the Country and the people and which have been embodied in a document. In the wider meaning the constitution means collection of legal and non-legal or extralegal rules taking the form of usages, understandings customs or conventions, traditions according to which the community has agreed to be governed.

5. Now if one looks at the great Thirukkural dispassionately in the light of both sense it is a matter of pride for every Tamilian to know that Thirukkural complies with both the senses. Both legal rules and non-legal rules are embodied in one document like Thirukkural. In both senses it is constitution with the different that it does not contain merely collection and selection of Rules and non-legal rules but Thirukkural contains fundamental and higher universal principles which the great Thiruvalluvar has framed after deep creative thinking. It is more than a constitution. It is one of the greatest literatures of the world. It is a comprehensive treatise on social, economical and political aspects. Albert Schweitser has said "with sure strokes the Kural draws the ideal of a simple ethical humanity. On the most varied questions concerning the conduct of man to himself and to the world its utterances are characterised by nobility and good sense. There hardly exists in the literature of the world collection of maxims in which we find so much lofty wisdom".

THE REASONS FOR CONSTITUTIONS

6. From the earliest times people had thought it proper or necessary to write down in a document the fundamental principles upon which their Government for the future should be established and conducted. The question therefore arises which is the earliest document which can be properly called as the earliest constitution? European History shows that in 1579 there was an Act in Netherlands constaining selection or collection of fundamental principles. But our history shows that more than 2000 years ago a constitution had been born in the monumental document in the form of Thirukkural which is at once one of the greatest literatures and serves as an example of the earliest prototype of the Constitutions. There must be certain weighty reasons for the great Thiruvalluvar to embank upon writing the great Thirukkural Constitution. Most of the modern Constitutions have been necessitated for various reason like getting independence as in U.S.A. in 1787, and in India in 1947, breaking with the past by revolutions in France and U.S.S.R. defeat in war resulting in now constitutions in Germany and france or for uniting new communities together. If we investigate the origin of the Thirukkural-Constitution, we are led to know that the greatest man Thiruvalluvar on the earth in that period of history had chosen to write it with so many ideas and ideals with the immediate object a of making a united Tamil Nadu with a single

 state and one Government. The state should be bigger dimension and greater in ideals. The world clings to the feet of the great Rule who wields his sceptre with love for this subjects (544)

7. The second reason is that Thiruvalluvar wanted to make the people sovereign and impose limitations on the Rulers so that they should be constitutional Rulers. The people should decide and select the person among them who would be capable of giving good and benevolent Government which should be the Government of the people for the people and by the people. It is not a matter for blame but it is the office and duty of the Ruler who should protect the people from all evils and external danger, look after their welfare and punish the persons who are found to offered the laws of the state (549)

This Kural couplet contains a great constitutional doctrine known as social contract which came to be adumberated by the Franch scholar Rossean at a later stage. The Social contract has been between the people and the Ruler under which the person who had got the mandate to rule has been alloted three duties namely the Executive, Legislative and judiciary. The sovereign power to change the Ruler if he rule badly rests with people and the people are under obligation to be loayal to the Ruler as long as there is good Government. There is higher law which enables the people to rise in revolt against the Government which oppresses people and overthrow it. Thus it is constitutional Government which is the gift given to the world by the great Thiruvalluvar.

It is the tears of the citizens groaning under oppression of the Ruler that become the weapon in their hands enabling them to rise in revolt against him and over throw him. Under the chapter "Not Terrorising the people" (வெருவந்த செய்யாமை), Thirukkural is emphatic that a Ruler who is cruel and oppressive has no right to Rule and his Rule should be ended. The great Thiruvalluvar by framing Thirukkural Constitution has given to the world the messages of constitutional democracy and concepts of welfare state, in Thirukkural to define the Ruler, nowhere it is indicated that the king is a hereditary office. As already seen the Ruler would lose the right to Rule if he rules badly, and becomes a tyrannt. Thiruvalluvar is a great believer in democarcy. He has exploaded the theory that the king can do no wrong and the king is the Representative of God. The Ruler should follow democratic principles. In administration he should take the aid and advice of the Representatives of the people who are greater than himself, who are virtuous and supremely wise and who are capable of administering rebuke to him. The father of the Indian constitution Dr. Ambedkar said "In a democracy there may be difficulties for the Ruler to give food and clothing to the people., But there should be no difficulty to provide pure administration". Pure administration is possible only if the Rulers are

able to correct their own faults and avoid committing offences and abide by the good advice of ministers and elders. The Ruler or the king is only a constitutional head like the president or the Governor under our constitution and the ministry (அமைச்சு) is actually incharge of the administration. It is quite evident that Thirukkural is the precursor of this provision of making the president or the Governor only constitutional head and the ministry in actual charge of the administration as cotemplated under articles 74 & 163 of our Constitution.

CABINET IN THIRUKKURAL CONSTITUTION

Thirukkural envisages a cabinet aiding and advising the constitutional Ruler under the chapter cabinet. Thiruvalluvar gives fore-most role to the Ministry in the scheme of administering the country and planning welfare measures intended to benefit the people. The minister should be capable of successfully conceiving a remarkable (facill but highly profitable) project and should know the seasons and how to execute it (631). While executing the project he should have steadfastness and interest in the well-being of the citizens, knowledge obtained by study and manly efforts (632). The minister concerned is one who knows laws of the country and is not hasty but calm and weighty in the expression of his views and knows at all times the right course of action (635) The ministers besides knowing the laws of this country should acquire the knowledge of international law, conventions and traditions so as to be in a position to act effectively (637).

9. Greater responsiblity is vested with the ministry. It is the duty of the ministry to give out decisively what is right and true through the constitutional head is unwise and throws away the advice without knowing the implications of spurning the advice (638). What the great Thiruvallurvar has said in those days, now our Higher courts say that the constitutional heads should not alightly spurn the advice of the cabinet.

SECULARISM

10. Gods or Religion have no place in the scheme of constitutional morality envisaged by Thiruvalluvar. In a recent judgement (March 11) in Assembly Dissolution case, the Supreme Court has said that our constitution requires the state to be secular in thought and action. The Thirukkural-Constitution requires the state to be secular in thought and action and wants that love alone should unite the people with the Rulers (740).

11. There are three sources of law according to Modern theory, the writings of virtuous and great Men, the laws in the proper sense and the Ruler's commands, orders and ordinances. Divine origin to the laws as held in Roman, Greek and Jewish and Hindu theories of laws has been

 totally discarded by the Modern Philosophers of laws. It is really very significant and relevant to note that the great Thiruvalluvar has shown the way that the so called Divinity has no place in the origin of laws, and in goverance of the Country. The State stands by Rule of law, social justice, and the guidance of men of justice with kind and charitable disposition of mind. Anthnar are Aravoor, men of Justice whose writings lead the Government and the People (543). It is not the spear that brings success to the state both in peace and war but it is the Rule of law and Justice that is Responsible for success in the relationship between the Rulers and the people. (546)

12. The poet Kalladar says that Thiruvalluvar discarded the ways of theology and lays down scheme of morality and ideal of justice and directive principles of state policy. Thiruvalluvar does not belong to any religion but to his credit all old and present day Religions regard him as the greatest man deserving all praise and adoration for his secular views. Secularism is his great contribution to the Indian Constitution and to the world secularists.

JUSTICE BY PERSUASION

13. Arthur Sutherland, an eminent jurist says that traditionaly we proceed by persuasion, not by force and in the long run persuasion holds the best hope. The father of the Indian Constitution Dr. Ambedkar has thought it just and necessary to incorporate the directive principles of the state policy in the constitution. Article 37 states that the directive principles of state policy are not enforceable by any Court but they are fundamental in the Governance of the Country and it shall be the duty of the state in applying these principles in making laws. In principle, this article shows that persuasion is the best way to make the state welfare state. It means that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may by a social order in which justice social, economic and political shall inform all the institutions of the national life.

14. Thirukkural is full of directive principles and presuade both the state and the people to apply the principles to secure a social order in which social justice would be the governing principle. The justice which Thirukkural contemplates is known is distributive justice. Corrective justice is justice rendered by courts in particular cases. But distributive justice is taken to the common man and to the people in distress and poverty.

"Do justice to those unfortunate people with all your strength and atmost might quite ceaselessly in every year and in all the ways open" (33). That kind of justice will yield distinction to the state and prosperity to the people (31), we shall be gratified to know that Thirukkural - Constitution in a way has embodied a constitutional requirement that is

we now are familiar with but it is in the sense that people according to their needs should be given help (52') by the state. The common man should be involved in the welfare measures,

In every country society would consist of rich, poor, helpless, employed, unemployed, good, bad, etc. If the state adopts a policy of non-interference there would be no progress at all, and there would be no socio-economic change. On the other hand it is the duty of the state to aim at fundamental change in the structure of the society so that every one should get what is due to him in the equalitarian state. Thiruvalluvar advocates for equal rights for all and according to him all shoul lead happy normal life.

THE CONCEPT OF PLANNING

15. We may think that planning by the state is a modern concept conceived in the modern constitutions and laws. But we see that Thirukkural has advocated planning even in those days for the states to embark upon. The state should have the will and power to embark upon planning, production in pursuance of the proper planning then protecting the wealth from exploitation and distributing the same according to the needs of the society (385).

Protecting wealth from exploitation and misappropriation has a tremendous importance and relevance today because the common charge against the state is that they seldom care to save the country's wealth from exploitation and misappropriation.

16. Perasan Thiruvalluvar in several other Kural venbas has laid great stress on the welfare measures and justice and pure administraton. The state shall never swerve from social justice and pure administration" (384). "You can not play fast and loose with the question of purity of administration" is the observation of the father of the Indian Constitution. The qualities needed for the Ruler are kind words, graceful givings, rendering justice and listening to the bitter but good advice.

EQUALITY & PRINCIPLE OF NATURAL JUSTICE

17. Thiruvalluvar has made the doctrine of equality the cardinal plank for social, economic and political programmes. Without equal opportunities, it is not possible to achieve equality and progress and prosperity. If opportunities are given to all, inequality would be the thing of the past and no one should think that there is some one either below him or above him. The very idea that some are low and some are big in society either by birth or by reason of poverty are anathema to the man to man and to the concept that all men are equal.

Thus Thiruvalluvar has been the greatest exponent of social justice and equality in his age like Dr.Ambedkar in the present age who has made social justice and equality as the basic features of the Indian Constitution.

18. The principle of natural justice is a concept now accepted by all the constitutional experts the world over. They all agree that this concept of natural justice has given birth to doctrine of equality. No one

 should be condemned without hearing" is the message of natural justice. Thiruvalluvar perhaps is the first great man who has given shape to the concept of natural justice. In the Kural venba 541, the words "தேர்ந்து செய்வதே முறை " contain the concept of natural justice. It also contains another system which is now known as inquisitorial system. The above words of great legal import are to be considered along with the legal terminology occuring in the Kural 548 " ". Both the Kural concepts taken together introduce in the sphere of administration of justice and Jurisprudence fair and just substantive and procedural legal concepts like principle of natural justice and inquisitorial system. The adversory system left by the British is not sound and fair to us. But the inquisitorial system advocated by the great Thiruvalluvar which is now in vogue in the continent deserves to be embodied in our jurisprudence. That is sure way to find out real truth as against the legal truth. With the present adversary system the courts are not in a clear position to find out the real truth in the trial of cases.

19. Such are the consitutional principles conceived by the greatest Philosopher of law Thiruvalluvar not only as a political or legal document but also as an instrument that would serve the ultimate goal of social revolution and of national renaissance as observed by Prof.A.V.Dicey. As observed by Pandit Nehru in another context the constitutional development initiated by the great Thiruvalluvar in those days has been in touch with life, aim and aspirations of the people and it has been always ahead to keep people's eyes and mind up to a certain high mark. The aim of Thiruvalluvar in framing the Thirukkural - Constitution is to make Tamilnadu an ideal state with great constitutional achievements for other nations to emulate and to create a good world state for mankind. But the introduction of caste system as contained in Manudharma Sastras and the consequential suppression of the great Tamil Pariah Kudi which has strongly opposed to the pernicious caste system and to which the great Thiruvalluvar belonged and the considerable group of Tamils meekly submitting to the cancerous caste system and alien influence are responsible for the neglect of Thirukkural and its ideals of social justice, equality, secularism, social revolution removal of poverty, pure administration. The result is that the Tamils have almost forgotten their rich history and glorious past. However the great constitutional Reforms of Thiruvalluvar, the greatest law given of the Tamils and his remedial measures for removal of the ills and evils afflicting the people and the state have found unique place we the Indian Constitution framed by the great Ambedkar belonging to an equally suppressed community.

8 ARTHASASTRA AND TIRUKKURAL - A COMPARISON IN LEGAL PRINCIPLES

Dr. (Mrs.) V. Balambal,

Kautilya's Arthasastra (AS) and Tiruvalluvar's Tirukkuiral (K) are the two important treatises of Ancient India, the former belonging to the north and the latter to the south. AS is a monumental work on State craft, covering all aspects of administration whereas Kural approaches from a different angle, giving importance to virtue (aram), wealth (porul) and love (kamam).

It was believed that the concept of ethics was much bigger and deeper than law. Religion was a cohesive force of the ancient society. There was no separation of religion and ethics, and religion and law. Religion, ethics and legal principles were one and the same. But Kural separates ethics from religion. It does not agree with Manusmriti which lays down different sets of law to different castes. Valluvar's ideas have an extraordinary freshness and relevance even to the modern times so that a restatment and interpretation of them today is of value not only as a historical study, but also as a foundation for development of a polity on lines whih intrinsically will conser e all that is best in the best.

Kautilya was a realist as he dealt with politics by itself as distinct from religion although he based his theories on dharmasastras. In AS there is an elaborate treatment of the functions of the State and methods and procedures, but in Kural, there is a balanced treatment of the concept of state and its constituents and functions. It may be because Kautilya was engaged in writing a book on state craft while Valluvar was moved by no other purpose thatn stating the moral values which the state should secure. He did not write for any particular occasion or with any particular motive. His stress is on the glory of righteousness for life. He states the highest values based on reason and judgement. Valluvar's writings were not subjective and they are valid for all times.

The background of the two authors matters much in the theme of their works. Kautilya was more associated with the Maurya empire whereas Valluvar was a very simple and ordinary citizen. Hence their approach and treatment to the subject matter vary.

All through the ages, much importance has been given to traditions and dharmasastras in the field of judiciary. Hence when Kautilya wrote AS codifying the rules and regulations to be followed by the ruler and the ruled, it became very convenient for future rulers - they either followed it or made necessary modifications according to their needs.

Though the Sangam literature is very rich in sources administration

of justice, crimes, punishments, witnesses, prison etc., this paper mainly deals with the informations got from Tirukkural only in comparison with AS. The king was the fountain head of justice and his main duty was to maintain the social order intact. All new consisted in the maintenance of the long established status; any attempt to subvert the prescribed socia lorder was a fundamental crime and deserved highest punishment while other crimes passed unnoticed or escaped with a nominal penalty. King was the repository of all secular powers and he was the source of justice. Though the Kings of ancient times, both in the north south, were not law makers, they were highly respected as law promoters and custodians.

Books III and IV of AS deal with the Department of Judiciary. King was the highest court of justice. He entered the Assembly Hall at a fixed hour in the morning everyday and looked into the affairs of his subjects (1:19:10).

Dharmadhikarin, dharmasthas, amatyas and pradestris were important judicial officers. Kural does not mention any name of such officials as it entrusts the King to discharge the judicial duties. Every case was heard by not less than three judges.It is not known whether all these judges sat as a bench in each case or heard independently. All judges enjoyed equal status. Three judges of the status of an amatya should be appointed at Janapada Samdhi (frontier post), at dhronamukha (headquarters of 40 villages), and at Sthaniya (chief city among 800 villages - capital) (3:1:1).

If the judges were partial, or if they abused or defamed the party, they were fined. If they repeated the same, they would be dismissed (4:9:13-16) for wrong judgements also the judges were fined. They had to make good any loss suffered by a party through their wrong judgement eight times over (4:9:18-20).

For administration of justice, there were two sets of courts besides the villages courts which dealt with petty cases under the guidance of headman and other elders. They were Dharmasthiya andKantakasodhana courts. The dharmasthiya courts were more or less like civil courts presided over by three dharmasthyas, learned in sacred law and three amatyas and these courts were in all important cities and centres. They dealt with all the civil matters relating to property, labour, marriage, sati, inheritance, debt and deposits, abuse, assault etc. The Kantakasodhana courts were presided over by three Pradestris and three amatyas. This court acted as a police court because the detection and prevention of crimes and award of corporal and capital punishments rested with it. It protected the artisans, merchants, labourers and prostitues. Post-mortem examinations were conducted to trace the cause of death. Cross-

examination was an important part of the trial. The informants had to shadow the suspects.

The State felt to call upon to accept as valid every local language, customs of the caste, community, class and family, every bye-law of the corporate bodies, the guilds and such other organised non-political communities.

The procedure to be followed is specified in AS. A matter in dispute between two persons have four feet. They were (1) dharma basedon truth (2) Vyavahara based on witness (3) caritra based on common acceptance and (4) Rajasasana, the King's order (3"1"39-40). These four are the different sources of authority on the basis of which a decision is to be given in a case.

The complaint by the aggrieved party wasthe first step. But in cases concerning temples, brahmins, ascetics, women, minors, aged, sich and orphans, the dharmastha was allowed to institute the proceedings even if they did not approach the court.

The Lekhakas (writers) took down the proceedings and recorded. They were punished if they committed errors in their work(4:9:17). After receiving the complaint, the judge had to get the following details written down by the writer of the court (1) the time and place of the transaction (2) the amount of debt (3) the name, caste place of residence of the complainant and defendant. Both of them were questioned on the case and these were recorded (3:1:17). The judge ordered both to furnish competent surities (avastha) to ensure the receipt of fine from the losing party. The defendant was given 3-7 days to file his reply to the plaint. If he failed, he had to pay fine for late filing. Counter reply was to be filed on the same day by the complainant (3:1:27-28). Necessary evidences were to be produced before the court (3:1:10). The witnesses had to satisfy certain qualifications. They were to be from members of good family and of good character. King, women, members of the parties, degrated cirminals etc., were not eligible to be witnesses. Women could give evidence only in cases of abuse, adultery, assault and theft (3:11:28-30). Witness had to take oath before giving evidence. He would be fined for refusal to give witness (3:11:38). The witness was punishable for various other reasons too. The court allowed halting and travelling allowances to the witnesses, met by the defeated party (3:1).

A suit may be lost due to (1) the contradictions in the statements made (2) defects in witness cited (3) non-appearance of the party in the court because of his escape from custody (3:1:47). There is no reference to professional lawyers in AS as well as in Kural. The party losing the suit paid the state 1/5 of the decreted amount as fine. If the suit was between father and son, teacher and student, employer and employee,

the losing senior had to pay 1/10, while the losing junior had to pay 1/5 (3:11:32-33).

Regarding the criminal cases the suspected was arrested and kept in police custody (Caraka) until the next day when he was tried. The usual procedure followed.

Generally while delivering the judgement, the judges bore in mind the customs prevalent in a region and community (3:7:40).

The village courts were self sufficing and independent of imperial control both in the north and in the south. Village elders or gramavrddhas decided the local cases. It was binding on the people (3:9). It was the same with the Tamil Society of Valluvar's time. Manram, Poduyil, Avai and Arankuravayam were different councils discharging justice. AS gives importance to procedural details while Kural shows interest in laying down the substantive principles of law.

As monarchy was the main form of Government, Valluvar insists on justice being imparted by the King. As unholder of justice, the King had to follow certain norms. Valluvar specifies that in Chapter 55 to Senkonmai (righteousness) - Kurals 541-550 give a detailed account of the imparting of justice. It is believed in ancient society that the penance of the sage, chastity of the wife and regularity of monsoons depended on King's justice. There were case of Porkai Pandyan who cut off his hand for his own wrong doing, justifying self imposed penalty (K.547).

The sceptre or senkol was the visible emblem of royal justice. It stands for impartiality and other virtues of justice. While AS explains the judicial procedures in many chapters, Valluvar states it in less than two lines. The guilt must be made out unmindful of any person or other considerations and taking an impartial view, the proper and appropriate punishment for the offence must be discovered and then justice accordingly must be meted out (K.541).

Valluvar stresses the need of the accessibility of the King to those who seek his justice. He must take pains to study their case; he must then do justice to them. A King who does not do so will descend to a low level and ruin himself (k.548). Due importance should be given to the truthfulness of the case and the King should be impartial. If the king is just, that itself would safeguard him (k.547).

It is the duty of the King to punish the wrong doers. It is like removing weeds from a flourishing corn field (K.550). Punishing the evil doers for protecting the people is not a stigma but a duty of the King (K.549). Parimelalagar in his commentary (K.550) has states that the serious offenders were those who were guilty of arson, murder by poisoning, assassination, theft, robbery, looting and adultery. He specifies

 the punishments for the above offences - torture, imposition of fine and decapitation.AS distinguishes between communities with regard to the punishment given for the same crime but no such treatment is referred to by Valluvar as all are equal to him before law. Valluvar insists that a promoter of law (King) should not have any bias, prejudice or preconceived notion in delivering his judgement. The people expect a just government, just as they eagerly await good rains (K.542). All prosperity and good rains would not fail a just king. (K.545).

King's duty is to safeguard his people, following the norms specified by the learned people and in ethics (K.543). Though a King's fame is attributed to his conquests, he is much more praised, if he is not deviating from real justice (K.546). Valluvar goes a step further and states that an unjust King needs no enemy to defeat him. He would spoil himself (K.568). Thus Valluvar insists that the base for the prosperity of the King, his people and kingdom was his jsut rule. Of course just rule isnot devoid of love and generosity.

Valluvar does not deal in detail with various types of courts etc., like Kautilya. He believed that a just king could set an example to just people and good government too.

Existence of highway robbery is known from K.552 in which Valluvar says that a King who demands from his subject anything, whether tax or even loyalty by force, is similar to a highway robber who asks people to stand and deliver by threat to life (K.552). A King who was harming his people was worse than a murderer (K.551). It is necessary for the King to consult his assistants instead of indulging in anger (K.568). Consideration is important in a King (K.580). If a King is too severe with people in his talk and punish them torturously, he loses his energy to conquer (K.567).

Though there is no special reference to witness in Kural, some ten verses (K./291-300) stress the significance of truth which is the basic element in giving evidence. A false litigant ran the risk of losing his life by the ordeal.

Regarding prisons, as it is not a political treatise, Valluvar does not make any direct reference to prison. In Kural57, he mentions the word Sirai not in the context of prison as such but in stating how women have go guard themselves. Other Sangam works like Purananuru, Cilappadikaram, Manimekalai etc., make good references to prison.

But AS deals in detail about prison and its officials. They were garadhyaksa, caraka and bandhana (2:5:5). It was their duty to take proper care of the prisoners. If they illtreat them, they were to be punished. Severe punishments were given to officials who had assaulted the prisoners and molested the female prisoners (4:9:21-27). The

dharmasthiya bandhanagara was perhaps the lock up (caraka) where the defendant was kept till the case was decided. It may also have been a place of confinement for those unable to pay the fine imposed on them by the dharmastha. Fines could be paid off by doing work for the state. Such persons were known as dandapratikaris or dandopakarin (2:24:2;2:23:2). The mahamatriya bandhanagara was the prison for criminals who were enable to pay the fines imposed on them. Almost all prisoners were defaulters of fine payment. The period of imprisonment depended on the amount of fine to be paid out of the wages earned for the work done for the State.

There were separate wards for men and women with halls, sanitary conveniences, fire protection and prayer hall (2:5:5-6). Very young, old, diseased and destitute prisoners had to be set free on all full moon days; on the birth of a son; acquisition of new territory by the King etc. Such practices were also prevalent in the Tamil society but Valluvar does not make any mention of the same.

According to Valluvar ingratitude is the most heinous crime (K.110). Though trial by ordeal was prevalent in India, neither Kautilya nor Valluvar makes a mention of it.

Valluvar and Kautilya agree that the ancient Kings were not law makers but were only executors and protectors of the existing laws based on tradition and ethics. AS was for one State, bearing in mind, total discipline and the omnipotance of King. But Kural is relevant to all States and all people of all times with little modifications, bearing in mind the welfare of the people as the ultimate end. Dharmasastras play an important role in the legal expressions of Kautilya, while ethics and realities play significant part in Kural. Kautilya codifies judiciary and its proceedings in an elaborate manner. Though Kural makes only few indirect references to it, they are firm and suitable to almost all times. As we have already seen the background of both the authors and their approach and expression to their themes, we have to view them differently. Inspite of it when a comparison has been made, we are sure that both of them firmly believed in just monarchy on one side and welfare of the people on the other side.

12 JAILS AND DUNGEONS OF THE ANCIENT TAMIL NADU

G. Deivanayagam

INTRODUCTION

Jails and Dungeons were a part of a civilized society through out the world since the ancient period. This is because man is not perfect. The imperfections in men tempted him to commit evil acts. Hence police, judiciary and law and order institutions emerged, Moral teachings alone did not change the psychology of the criminal but fearful punishments as people believed might prevent the evil people from committing or repeating crimes or mistakes. This probably motivated the ancient rulers to construct especially Dungeons.

Tamil Nadu too under the Chera, Chola and Pandya dynasties used jails and dungeons to correct the thieves and criminals and during the early period king was the fountain head of authority. He combined in him the role of a legislative and judicial authority. Hence king was the ultimate judge and this was possible because these days of Tamil Nadu were like small city states of Greece in this political environment. The institutions of judiciary and police were more or less in the primitive state, and the mode of punishments too were not sophisticated. At the same time Tamils were also attempting to invent new kind of creative punishment like vellidier mandarm and Bootha sathukkam still it must be admitted the source matricles for this early period or comparatively scanty and hence we are not able to get a clear picture of ancient prisons and dungeous of Tamil Nadu.

Available evidences are all from our ancient literature. Out of them. We don't have enough information about them.

Silappathikaram gives a vivid account of two structures of this kind. One is called Vellidai mandram and the other one called Bootha sathukkam.

The Vellidai mandram was like this.

"In the warehouse at the mouth of Kaviri lay. Bales and baggages heaped mountain high. Bearing the names of symbles of either foreign or native or native owners with no guards without or within. Any attempt to steal was found to fail. So, wakeful were the watching eyes of a genie. The thief. if any was made to carry the stolen bale. And run around the open space tired and wear (R.S.Pillai, Silappathikaram 5: 91-98).

It was a peculiar structure. Though it was like an open air warehouse

in the port the thieves were punished by the mysterious genie. The mischievous actions were watched by the eyes of the genie-an electronic eye - like device. The punishment was rather peculiar. When the thieves attempt to steal the bales and luggages bearing the addresses of the inland or foreign owners kept in this ware house of the Puhar post was made to carry the stolen bale on his head and run round the open space until he gets deadly tired. This was forced by an unseen power since this warehouse did not have any guardmen.

The Bootha sathukkam was an another structure the dungeon like device where the punishment also given instantly to the culprits. The Bootham after beating the culprits ate the outlaws like unmoralwomen, bigamists. false witnesses and scandal mongers. It was described as "A genius there was associated with a square, that frightened to death false acetics, secretely immoral women, disloyal courtiers. Bigamists, false witnesses and scandal mongers. (R.S.Pillai, Sila. S:106-110)

Jails and Dungeons are mostly built structures. They are connected with the maintenance of Law and order. The accused, culprits or the criminals and chargd persons notified by the court of law and justice or by the society or by the soverigmity were kept in these structure inorder to avoid them from the common normal society. This was the punishment. The timing of this punishment varies accordingly to the nature of the crime or problem and the structures were also depends accordingly.

Jails were seen almost in every Royal city while the Dungeons were seen in certain areas only. The jails were normally provided with enough space, lighting and guardmen. But the Dungeons were notorious for their darkness and of their space sometimes very small in all measurements just like a cage and sometimes for its enormous space with misleading pathways and of their irregular flooring and walls. Though this variation seen with the space, the absolute darkness is the characteristic of Dungeons otherwise called cell. The Jails were mostly built on the ground level while the Dungeons were seen below the ground level ventilation was adequate in Jails while it was inadequate in Dungeons. Some Puranic stories depict some Dungeons with dark caves and caverns.

Tamil traditions mention these structures as Sirai and Iruttarai. Jails were normally rooms closed on three sides and the fourth side with the grids and doorways. Open air Jails were also in usage among the ancient Tamils for automatic punishment. It was of a peculiar type.

When Charaman Kanaikal Irumporai was defeated by the Chola he was taken as a prisoner and put in Jail. He was thirsty and asking some water to the police people from this, It is inferred that the fundamental needs like water, food etc were served to the prisioners on request only, andevery for the Royal political prisioners too.

There were two different catagories of Jails and Dungeons. They were public and private oriented.

The private sector had the punishment structures in castle and Pannai while the court, police station, palace were having these structures besides the original and separate ones.

CONCLUSION:

It must be stated that the facts cited above relating to ancient Tamil Nadu were only a few. Still they highlight the significance given to the maintenance of law and order by the ancient Tamils. From the modern age point of view this kind of social security structure might appear to be in its rudimentary stage, yet or reflects the level of cultural developments of the Tamil society during the ancient period. In fact the Sangam literature repeat much more the peaceful life of the people of Tamil Nadu. From this we can infer crimes not too many and the number of Jails and Dungeons required were also not too many.

11 CRIME AND PUNISHMENT AS REVEALED THROUGH FOLK BALLADS

25

DR.S.SHANUMUGA SUNDARAM

I. INTRODUCTION

Ballad is a form of narrative folk song developed in middle ages in Tamil Nadu. *In Tamil we call this ballad as* Kathaippadal, Ammanai, Kummi, Chinthu, Kuram, etc.

This type of folk song varies considerably with time and place, but certain characteristics remain fairly constant and seemingly fundamental:

1. A balled is narrative.
2. A balled is sung.
3. A balled belongs to the fold in content, style and designation.
4. A balled focuses on a single incident.
5. A ballad is impersonal, the action moving of itself by dialogue and incident quickly to the end.

A ballad is story. Action, character, setting and theme, are the four elements common to all narrative.

The ballad belongs to the folk, but it is by no means primitive or barbaric; rather it the product of accomplished and often literary conscious poets. The folk are unlettereal, rather than illitrate. They are homogeneous, interested in one another, in the dramatic aspects of life. They have a great store of traditional story stuff-marchan and folktale, and a store of folk love, part of which is with them only conventional and half beleved in. So the ballad is likely to be a compound of folk have love, legend and local history. Through the years the folk have their way with the local history. Through the years the folk have their way with the ballad, shaping it, varying it, in theme incident and style, but their unmistakable touch upon it.[1]

We can classify the ballads into four types as follows:-

1. Mythical, 2. Epical. 3. Social and 4. Historical.

Mythical ballads deal with the origin of folk deities such as Sastha, Sudalaimadan, Mutharamman, Neeliamman, Karuppannasamy, etc.

Epic ballads are adaptations of the stories of Epic and Ithikasa. The adaptations bear no resemblance to the originals, their characters and content undergoing complete transformation in folk imagination.

Kovalan Kathai, Alli Arasani Malai, Pavalakkodi Malai, Eniyerram, Ponnuruvi Masakai etc., are the examples for this type of ballads.

Social ballads deal with intercaste marriage, property rights for women, and oppression by the Caste system. Muthuppattan Kathai, Nalla Thankal Kathai and Chinnathambi Kathai are the examples for this type.

Historical ballads deal with incidents of history; mostly with the causes, course and results of battles. The story of a hero is traced through the incidents of history.

Like Ramappayyan Ammnai, Aiver Rajakkal Kathai, Eravikutti Pillaippor, Sivagangai Ammanai, Pooluthevan Sinthu, Kattabomman Kathaippadal are the examples for this type of ballad.[2]

In this paper we are going to see the legal heritage of the Tamils as revealed through folk ballads. Legal evidence, the legal profession, criminal law, judicial administration, crime, punishment, witness, the argument process, court proceedings etc., will be some of the important aspects of legal heritage. But we trace only crime and punishment in Tamil folk ballads.

Ballads are the biography of the people delienating their life in the present and the past. They halp to understand the social politial, literary and linguistic history.

Written literatures reflect the society only of their time in which they are written. But folk literature reflect the society of all times since they adapt themselves to the changing patterns of time, [3] So ballads are the good sources to find out the various types of crimes and punishments.

II. DISOBEDIENCE

(i) In Mythical ballads:- We can call this type of ballads as shamanistic epics. They accomplished with folk deities, puranas, magical and non-human means. Here we can see the punishment of gods of goddesses.

1. Sakthi in Kailas once tested the Omniscience of Siva by enclosing an ant in a small casket to see whether he was feeding it or not. On opening it she found that it had a little bit of grain in its mouth. As atonement for her fully in daring to doubt and test Siva, she was asked to do penance on earth.

Testing the God is considered to be a crime. It is doubting the authority. So the punishment is to be born on earth.

2. In Madurai Veeran Kathai, the hero fell in love with two girls. So god punished him. Love is a crime in Deivaloka and so the punishment is rebirth on earth.

3. In Sudalaimadan Kathai, the little Madan woke up from his cradle at midnight, went to cremation ground, ate the burning corpses there, came back stealthily and occupied his cradle as a quite innocent child. But however his mouth betrayed his eating. So Siva sent him out from Kailasa, to the earth as a punishment.

4. Sangilibhutattar was in Tirukkurangudi Vaishnava Temple, there he tore the hild of the chief priest to pieces and pushed out the pieces through the key hole of temple door. On seeing this, the wife of the priest gave up her life on the spot. Then Aiyyanar controlled Sangili's mischief and sent him out from that temple.

Crime		Punishment
1. Doubting / Testing	-	Rebirth / Send out.
2. Love	-	Rebirth / Send out
3. Eating the forbidden food	-	Send out.
4. Murder	-	Send out.

So if anybody disobey their superior then it is considered to be a crime and the punishment is to send him out from that place.

(ii) In Historical Ballads

Historical heroes are considered to be mortal heroes with supernatural powers. Their stories are sung on occasions of festivals. There are so many historical ballads in Tamil. In this ballads we can see various type of punishment for crimes.

1. The Kannada King sent emissaries with proposals of marriage of his daughter with Kulasekare Pandian. But he rejected the offer, so the Kannada king attacked and captured him. On the way Kulasekaran committed suicide.[8]

In the Aiver Raja Kathai, the Kannada king was superior to Pandia. Pandia disobeyed the order.

2. Seven men known thence forward as Valankaimen met the Cola Ruler Karikalan, who kept them with him as his principal warriors. An unprecedented rain then caused a great havoc to the Cola land breaching the rivers and tanks. Karikalan ordered these Valankaimen to mend the breaches which they strongly resented. This attitude of the brothers incurred the wrath of the Chola who ordered their heads to be trod by an elephant, two of the Valankaimen lost their lives. This punishment is in Vengalarasan Kathai.[9]

3. The Sethupathi committed many acts of unsubordination to the Thirumalai Nayak. He was suspected of also harbouring, a design to

become an independent ruler following the precedent of the Nayak himself. So Nayak sent Ramappayyan and brought him to Madurai with chain. He was consigned to the prison.[10]

4. Sinnamalai is said to have rebelled against the British at the period from the Kongunad area. He joined Tippu's forces and had a proper military training. He took part in the Srirangapatnam battle where Tippu fell before the British forces and Mysore was completely over run. Sinnamalai escaped with a few of his men but later he was caught and executed.[11]

5. Marudhu became the Raja of Sivaganga. He opposed all the interference of the company in the affairs of Sivaganga. He helped all Palayams raged against the British. He ruled for twenty years. Omadurai arrived in Sivaganga. The British troops attacked Marudhu. Atlast Marudhu brothers and Oomaidurai were hanged to death. They were the last representatives of the resistance movement against British power in the eighteenth century.[12]

6. Iravikutti Pillai was the General of the Nair forces in Kerala. He opposed the march of Ramappyan into Tiruvadi Rajyam and refused to pay taxes to the Nayak. So his head was cut and it was taken to Ramappa.[13]

7. Kattabomman was born in 1760. He ruled from Panchalam kurichi. He declined to pay his annual tribute to the Nawab's representatives and hence the trouble started. He appealed for the East India Company's help. Finally Kattabomman was hanged at Kayattaru.[14]

8. Desingu ruled Cenji Fort. He refused to pay tax for 12 years to Arcot Nawab. So he was attacked by the Nawab. He committed suicide in the battle with his own sword.[15]

9. Khan Sahib was born as a Hindu but later he became a Muslim. He fought against Pulithevan. He next went to subjugate Sivaganga. But Thandavaraya Pillai made the British feel that Khan was playing the traitor to them. So they captured him and hanged him in 1794 on a mango tree.[16]

10. If the common people were not in a position to pay the taxes, then they were punished in different ways. King put these people in the pit of 'Attai'. ('Attai' is a creature which suck the human blood.) Or the King put a stone on the back of a person who is standing in a bending position. Or the king left the people with hungry for some days without giving food and water.[17]

DISOBEDIENCE	PUNISHMENT
1. Kulasekaran refused to marry	- Death by battle / captured.
2. Valankai brothers refused to carry	- Death by elephant.
3. Sethupathi refused to be underruled	- Death by prison.
4. Sinnamalai Khan sahib refused to be underruled	- Death by hanging
5. Marudhu brothers refused to be underruled	- Death by hanging.
6. Iravikkutti Pillai refused to pay tax	- Death by hanging
7. Kattabomman refused to pay tax	- Death by hanging.
8. Desingu refused to pay tax	- Death by battle.

Historical ballads are belonged to three periods as follows:-

1. The struggle between the Kannada rulers and Pandiya rulers.

2. The struggle between the Nayakas of Madurai and the Marava Chieftains of Ramnad.

3. The struggle between the Polygars and the British power with Arcot Nawab.

So totally it was a struggle between the powerful and the weak. If the weak people were disobedient to the powerful people regarding marriage, tax payment and underrule, then they would get punishment to death.

(III) IN EPICAL BALLADS

Stories from the epic, puranas and ithikasa are included in this type of Ballad. Here the characters are not gods and goddesses but most of them are considered like gods and goddesses. They are super human beings.

In Kovilan kathai. Maniarasan, an oil merchant, came to Madurai to sell his head load of oil. He reached a Kali Temple. Pandia King had no child. So he ordered that nobody should light the lamp to Kali. Not knowing this. the oil merchant promised to light one thousand lamps to her if only he could sell his merchandise. This did materialise. So he lit one thousand lamps. Pandiya King came to know this and ordered the merchant to be beheaded. [18]

Disobeying the king was a crime and cutting the head from the body was the punishment.

III. SOCIAL CRIMES

In social ballads, we can see how frustration of the exploited peasant turned to robbery and decoity, just to revenge on society, unemployment and its effect on society. The law abiding citizen does not evoke any administration from anybody. In this case, there is no extraordinary activities calling for attention from anyone. But it is the law breaker here who claims all attention from the masses. The masses believe in general that the law is made to protect the interests of the higher class of people. In their view a hero is the one who breaks law. Hence a law breaker, a vagabond or a scoundral becomes a hero in their eyes.

The ordinary man may not himself dare to break the law, but he has all the adminiration for the outlaw. The law breaker is immersed on drink and all the vices, what stand condemned in any decent society. To them the law breaker can cause no harm. No punishment will over take him, no retribution. He glorifies in his acts of violence and vice and that is his great virtue.

(i) Theft

1. Vannirasan was born in Vrrumalai in Tirunelveli district. He wanted to marry his maternal uncle's daughter. But his uncle put one condition that he must prove his skill in 'Kalavu' which is their Maravar caste profession. So he went to Tirunelveli and looted the temple treasury. But he was arrested by police. Vatamalaiyappa Pillai, an officer, gave the judgement to cut his head. [19]

2. Jambulingam, in Tirunelveli district, looted the rich people and helped the poor. He became a notorious thief. At first he was an ordinary man in Nadar Caste. When Pannaiyar tried to rape a village girl, he attacked and saved her life. Pannaiyar gave a false case on Jambu. Police tried to catch him. But he escaped to Srilanka. Then he returned to his village and did so many things. Eventhough he was arrested once, he escaped from the police. Atlast he was shot at dead by the police. [20]

3. In Tirunelveli District, Thangaiah was born in a small village, Kulasekara Mangalam. He worked in Munar tea estate. He tried to form a union. So he was branded as a rowdy and searched by police. Then he really became a thief and looted rich people. At last police shot him to death. [21]

4. Arivalvelu was born in Maravar community in Tirunelveli District near Kazhukumalai. He became a thief and looted rich people. Police searched him. He surrendered and was imprisioned in subjail. Then he escaped from the jail and killed his enemy Talaiyari. Atlast police beated him to death. [22]

5. Kasithever also was bron in Tirunelveli District. He worked against rich people. So a richman Sankaralingam put him in a false case. But he escaped from the village. His mother died by the police torture. So he became a great thief and looted many rich people. Narayana thevar helped the police to arrest him. He was sentenced to jail. [23]

6. Kathirvel Padaiyacchi was born in Tanjore district. He became a Talaiyari and then he worked in a temple. His sister was teased by a richman called Muthaiah. So Kathirvel slapped him with his sandal. Muthaiah, with the help of police attacked his house. In turn, Kathirvel attacked Muthaiah's house and looted. Police tried to arrest him. But he went underground. He looted many rich people. He killed Panur Udaiyar and Sahib. Atlast a circle Inspector shot him dead. [24]

So, in social ballads, we can see the punishment of death to the thieves.

We have one more evidence in an epical ballad, Kovilan Kathai for this type of punishment.

Pandiya queen had given her anklet to the goldsmith, Vanchippathan, for repair. He lost it to an eagle. So he was unable to return it. So the king considered him as a thief and ordered to be beheaded.

Kovilan went to that goldsmith to sell his wife's anklet. Now Pathan made out Kovilan as thief and escaped from the punishment. Pandiyan ordered to behead Kovilan. [25]

Whether it may be the reign a King or the British Company or a republic government invariably the theft is a crime and imprisonment or death is the punishment.

CRIME/THEFT	PUNISHMENT
1. Vannirasan	Death of beheading.
2. Jambulingam	Death by shooting.
3. Thangaiah	Death by shooting.
4. Velu	Death by beating.
5. Kasithevar	Death by jail.
6. Kathirvel	Death by shooting.
7. Kovalan	Death by beheading.

Here we can observe some important things for the crime and punishment.

1. Vannirasan did the crime because of his caste.

2. Kovilan was punished without that crime.

3. Others did the crime because of the social system.

(ii) MURDER

Kalai Chinthu is also a kind of social ballad. It means murder songs in the form of chinthu. This folk form depicts the concept of murder. These songs reveal the reasons behind the murder. At the same time, these songs tell about the punishment also.

1. One Chinthu describes the event of the murder of a mother-in-law who treated her daughter-in-law as a servant. In her inability to withstand the cruelty of the mother-in-law, the daughter-in-law murdered her by pouring the boiling lead in her ear.

2. Lust is also one of the basic phenomena to several crimes. Having the feeling of lust to some one's wife and also with those who are not in the matrimonial relationship is harmful. The murders cause due to the lust of father-in-law to her daughter-in-law, step mother into step son, father to daughter. The evil effects of lust of man who desires the wife of another as well as the unjustifiable love of a lady towards some other man are described in these songs.

3. Madras Thukkuppattu, Gopal Naicker Kolai Chinthu are the examples for this. The men in their old age marry young girls. This leads to adultry among women. Moreover in the economical position also problems arise in the distribution of the assets of the deceased husband. Dulaisiamman Kolai Chinthu is the example for this type.

4. The desire for wealth also leads to murder in Angarappatu Kolai alankara Chinthu. The agitated Murugan murdered nine men who were against him. [26]

5. In Pothampatti, a village in Madurai District, Santhanam was born in Maravar community. He killed Maruthamuthu in a quarrel. The British government searched him to punish. But people gave him protection. At last he surrended to the police and was punished to death. [27]

6. Karuppasamy was born in Kovilpatti in Maravar community. Once he killed a person and surrendered to the Police. He was a great warrior to his caste people. He was sentenced to death. [28]

7. Manikuruvan was born in Kurava community at Madurai. His mother had a vow to take revenge on Muthaiah Kuravan. So she liked to grow her son as a murderer. He became a big criminal. He killed Muthaiah's son in the open street at day time. His mother spent money and made him to escape from the case. Likewise she made him to escape nearly fifty cases. He helped his community people as a good leader. Then he killed a bus driver. So he was sentenced to jail for

seven years. He came out on conditional bail and killed the Judge and his wife. He lifted Muthaiah's daughter for the victory in a bet with him and raped her. Atlast he was killed by Muthaiah and his sons. But before dying he killed Muthaiah and his son.[29]

8. The conflicts due to petty reasons end in murder. These conflicts arise in the matters like dancing in the temple festivals, performing the pooja etc. Mampattiyan Kolai Chinthu is an example for this.

For these crimes of murder, imprisonment or hanging is the punishment. These ballads give a message to the mankind and also emphasizes the importance of a principled life. They give the ethics of mankind for the reader in an acceptable manner.

iii) FRAUDALANCE

1. Vinathiveenan tried to get a job for his livelihood. But Valloor was not ready to give him a work to live. Atlast he himself chose a work. With a beautiful mace he went to a public well and asked for a coin for each pot of water fetched out. He sworn in the name of Raja Kulasekaran. He collected money on marriage parties and funerals. He became so rich and built a big house. Atlast Raja came to know about his unlawful deeds. But he admired his daring. Instead of giving a punishment the king gave him gifts and made him his Minister. [30]

2. Ilayaraja married Matharavalli from Deivaloka pattinam by his victorious deeds. On return to his native a Poovandichi kilavi pushed Valli into a well and she took the form of Valli. Atlast Ilayaraja found out the truth.

For this fraud, the king put her into lime chamber and burnt her. Here we can see the Veeman's fraud is appreciated by the King. But Kilavi's fraud is condemned and punished by the king. Putting in a lime chamber is also type of killing. In pallava period Mahendra Pallavan tried to kill Thirunavukkarasu by this type of punishment.

(iv) INTERCASTE LOVE

Intercaste love marriages and their tragic consequences are in some social ballads. We can see love marriage between a man and a woman belonging two different castes.

1. Muthuppattan was a Brahmin. But he fell in love with two chakkli maidens. He told his brothers about this. They attempted to murder him but he escaped. The intercaste love was considered to be a crime by the high caste people. [31]

2. Kathavarayan is a great hero in Thanjavur District. He is the son of Mari in the lowest caste, he wants to abduct Ariyamalai born in higher caste. Finally he carries away not only Aryamalai but three others besides

her and marries them. Then Kathavarayan is accused of abducting and seducing a brahmin girl. He dies in 'Kalumaram.' [33]

3. Madurai Veeran was born in a cobbler caste. He loved Bommi, the daughter of the local Nayak ruler and ran away with her. He came to Madurai to control the thieves. There he fell in love with Vellaiammal. He was caught in an attempt to entice and abduct her away. The Naik ordered him to be quartered. [34]

4. Chinnamadan was the sole heir to the properties of his father and four uncles. He belonged to Nadar community. He had an only one aunt whose only daughter was married to him, when she was two years old and he was eighteen. When he was twenty years old he fell in love with Ayyam Kutti, a barbar girl. He lived with her in the outskirts of the town. Atlast his actual wife attained puberty but Madan was not ready to live with her. So they reported this matter to their overlord, the Zamindar of Nattathi. He allowed them to Kill Chinnamadan to save their caste system. [35]

5. Chitambara Nadar was born in Kanyakumari District. He fell in love with a Vellalar caste girl. They lived in a neighbouring village. So the Vellalar with the help of Brahmins tried to kill him by getting permission from the Cera King. Eventhough the King refused, they murdered him. [36]

6. Marimuthu was born in Pelli caste in Vakkampatti. He fell in love with a Chakkili girl, Veerayi. The village Nattanmai sent them out from the village by Panchayat judgement. It was also a punishment for the couple. Then the higher caste people set fire to their hut and killed them. [37]

7. Tuntimuthu a youngman of Mudaliyar caste fell in love with Puranavalli, a brahmin girl. They ran away to a far off country. Her bothers pursued them. Atlast they caught the lovers and reported to the king. He judged him to kill by thunti. [38]

8. There was a small king who belonged to Raja caste who ruled in Kollamkinaru. A youth belonged to cobbler caste, was working in the fort. He fell in love with princess. Atlast the king punished them by 'Marukal Marukai'.

CRIME	PUNISHMENT
1. Intercaste marriage Muthuppattan Brahmin & Chakkili	Death by battle.
2. Kathavarayan - Paraiyar + Brahmin	Death by Kalu.
3. Maduraiveeran - Chakkilli + King	Death by Marukal Marukai.

4. Chinnanadam Nadar + Vellalar	Death by killing.
5. Chithambara Nadar Nadar + Vellalar	Death by killing.
6. Marimuthu - Pelli + Chakkili	Death by killing.
7. Thuntimuthu Mudaliar + Brahmin	Death by Thunti.
8. Suppani Veeran Cobbler + Raja	Death by Marukal Marukai.

These ballads throw light upon the nature of social structure such as caste organisation, rigidity of caste system. Thus the upper feudal classes correspond to the privileged higher social castes and the cast rules are generally favourable to them.

Amalagamation of caste would break down caste barriers and strike at the root of class differentiation and introduce in social structure. Hence the opposition to intermingling of castes by marriage is really uninhibitory act on social change. So with the help of ruling powers, higher caste people wanted to prevent this by punishment.

(V) ILLICIT LOVE

Enamuthu Pandian, a Vallioor warrior, became the body guard of Singampatti Zamindar. There he had illicit love with the wife of the Zamindar. So he was sent out from the Zamin. Eventhen he continued his love game. Atlast he was caught and put to death with fire. We can see this in Enamuthu Pandian Kathai, a social ballad. [39]

In epic ballad Eniyerram, Duraiyodhanan had a love with Subathirai, one of Arjuna's wives. She reported it to Alli, one of the co-wives. With the help of one carpenter she made a magical ladder and punished him by beating with canes. [40] It is the minimum punishment for the illicit love. But for Enamuthu, the maximum punishment was death.

Historical ballads provide us materials to corrborative evidence to historical facts and also legal heritage of the Nayaks and the British. The ballads rouse righteous indignation against oppression tyranny and treachery, Kathavarayan, Madurai veeran, Sudalai Madan are all comrades in crime. They merely die or get killed to be brought back to like or installed as a favourite servant of goddesses. They are also worshipped as minor deities. With sacrifices. The criminal heroes are comparable to Robin Hood in English folklove. They were brave and heroic fighters. They robbed the bad and helped the good. So the outlaws have a legitimate grievance against the society; the masses sympathize with them.

CONCLUSION

We can come to the following conclusions regarding crime and punishment as revealed in Tamil folk ballads.

1. In mythical, epical, and historical ballads, disobedience to the gods, the kings and the superiors are considered to be a crime and deporttment (Nadukadathal), or death is the punishment for such crimes.

2. In social ballads, theft, murder, intercaste marriage and illicit love and considered to be crimes. Imprisonment or death is the punishment for such crimes.

FOOT NOTES

1. Maria Leach, Fank & Wagnalls, Standard Dictionary of Folklore, Mythology and Legend, p.106.
2. N.Vanamamalai, Studies in Tamil Folk Literature, p.49.
3. Dr. Ramanathan, Ballad, Literary Heritage of Tamils, p.666.
4. Dr.S.Shanmuga Sundaram, Sudalaimadan Vazhipadu, p.165.
5. S.Thirumavalavan, Madurai Veeran Kathaikal, p.142.
6. Dr.S.S.Sudalaimadan Vazhipadu, p.168.
7. M.Arunachalam, Ballad Poetry, p.192.
8. N.Vanamamalai, Aivar Rajakkal Kathai.
9. Dr.John Samuel, Dateless Muse, p.xxvi.
10. N. Vanamamalai, Studies in Tamil Folk Literature.
11. Ibid
12. Ibid
13. M.Arunachalam, Ballad Poetry, p.136.
14. N.Vannamalai, Kattabomman Kathai Padal.
15. Dr.S.S., Desingu Rajan Kathai.
16. N.Vanamamalai, Khan Sahib Sandai.
17. Dr.S.S., Meccum Perumal Pandian Kathai.
18. M.Arunachalam, Ballad Poetry.
19. Lawrence Nayakam, Vannirasam Kathai.
20. M.Arunachalam, Ballad Poetry.
21. Om Muthumari, Varappu Veliyil Rekkai Venti, p.29.

22. Om Muthumari, Varappu Veliyil Rekkai Venti p.46.
23. Umachandiran, Nattuppura Rajakkal, p.60.
24. Umachandiran, Nattuppura Rajakkal, p.83
25. Pukalenthi, Kovilankathai.
26. Marutha Durai, Tamilil Kolai Chinthu, p.11.
27. Annakannu, Ettiv Ezhuthatha Kavithaikal.
28. Om Muthumari, Varappu Veliyil, Rekkai Rentu p.36.
29. Dr.K.A.Gunasekaran, Nakarsar Kathaippadal, Kap, p.55
30. N.Vanamamalai, Veenathi veenam kathai.
31. S.Muruganantham, Aravalli Suravalli Mathara Valli.
32. N.Vanamamalai, Muthuppattan Kathai.
33. N.Vanamalalai, Kathavarayan Kathai.
34. Dr.S.Shanmuga Sundaram, Madurai Veeran Kathai.
35. N.Vanamamalai, Studies in Tamil folk literature, p.114.
36. Thangadurai, Chitambaranadar Aaivarkal, p.138.
37. Dr.Ramanathan, Nattuppurayiyal Aaivukal
38. R.Nirmala Devi, The Wandering Voice, p.127.
39. Dr.S.Shanmuga Sundaram, Enamuthu Pandian Kathai,
40. Pukalenthi, Eniyerram.

21 PRIMITIVE LAWS OF THE TAMILS AS FOUND IN TOLKAPPIYAM AND CILAPPATIKARAM

S. V. Subramanian

0.1. Tolkappiyam is the earliest available treatise in Tamil. It speaks about the language, literary theories, customs and manners of the Tamils. Here and there it refers to the custamory laws of the Tamils.

0.2. Cilappatikaram is the first avaliable epic in Tamil. Because it is a narrative on the story of Kannaki and Kovalan, it reflects the life of the Tamils and, the practices and beliefs of the Tamils.

0.3. Man, in his nature is moral, rational and social. His law may be judged by the extent to which it facilitates the development by these innate qualities. Customs (வழக்கங்கள்) become law in the later stage.

0.4. Law, is made by men, it is a body of rules and regulations for the guidance of the society over which it exercises its control.

The aim of law may be the promotion of the welfare of beings individually and socially.

0.5. Some laws are indigenous i.e., particular to a community. For example, in the early days the Tamils never took their women with them during the sea voyages.

'munnir valakkam makatuvotu illai' - 980

It is a customary law or primitive law.

Similarly, the ladies never ride on the horse made of palmyrah stem, even if they are disappointed in love.

ettinai marunkinum makatuu matal mel
porputai nerimai inmai yana. 981.

But, the men may ride the horse made of palmyrah stem if they are disappoined in love.

1.1. Tol. speaks about natural customs (உலக வழக்கு) and created customs (நாடக வழக்கு).

1.2. The words வழங்கியல்(483)வழக்கு (500 - 533)வழக்கியல் (731) பண்டியல் மருங்கின் denote the custamory laws. (574) denotes the ancient customs.

1.3. the basis for all crimes is being untrue (false) and engaging in faculty actions. It is denoted as 'poy' (false) and valu (fault).

In the earlier days the lover and his love lived happily without having a marriage ceremony; but later, when 'false and fault' arose between them, there was the need of a ceremony and the marriage ritual was conducted. It is clearly stated in Tolkappiyam, as :

poyyum valuvum tonrriya pinnar

aiyar yattanar karanam enpa 1091

1.4. In law, the interpretation of words and the unambiguous clear meaning of words are very important. It is explained in Tolkappiyam, as follows:

Porunmai teritalum conmai teritalum

collin akum enmanar pulavar - 641.

1.5 For lawyers, jugglery of words may be a mode of argument, because one word may have many meanings.

oru col pala porutku urimai tonrinum - 785

is the sutra which may be of help to lawyers.

1.6 The phrases vaymaiyum poymaiyum 985

(ie) truth and false, nanmaiyum timaiyum 996

(ie) good and bad, are based on society's welfare and human welfare which are the bases for law.

Wearing various flowers to denote different types of war was a customery law. To kill enemies in the battle field was not cosidered as crime.

1.8. The legal and moral norms vary from place to place and from one historical period to another.

1.9. To the battle camp, the warriors never took their wives.

ennarum pacarai pennotu punarar 1121.

2.0. Cilappatikaarm is the first and the best available epic in Tamil as well as in Indian literature and there is no equal to it in world literature. It deals with the story of a woman Kannaki who attained godhead. It speaks about the three kings of Tamilnadu Cera, Cola and Pandiya and their kingdoms. The phrases Cenkol and Kotunkol, express the varied administration of the king. Cenkol denotes the ruling of the country in the righteous, just way; kotunkol, ruling the country in an unjust manner, with tyranny.

2.1. The kings created a personal law for themselves. So they ruled the country in the proper way with justice. They feared wrong actions. If there is no rain, they thought it is their fault, if anything wrong happens to the people and beings, they felt that it is their mistake.

To be born in the King's family is not great or praise worthy. The throne is not a bed of roses: but is arrayed with thorns. They control themselves with the personal law which is created by themselves.

malai valam karappin van per accam

pilai yuir eytil perum per accam

kuti puravuntu kotunakol anci

manpatai kakkum nankutippirattal

tunpam allatu tolutakavu illena 26:100-105

2.2. Even, prostitues had some principles for themselves. Suppose a courtesan went wrong in her ways or doings, she is punished by loading seven burnt bricks on her head and she has to come round the city, because the common people also will be knowing about the character of that lady.

cutuman era vatu ninku cirappin

muti aracu otunkum katimani valkkai 14:146:147.

The proverb 'ciralincu cenkal cumantu' denotes the same even to-day.

2.3. Ethical literatures in the world including Tirukkural preache that a man should not steal, speak ill of others or back bit, or coveting another man's wife, saying or false witness, etc. But those literatures never say how we can rectify them.

Ilanko-vatikal had some ideal concepts to remove the had habits of human beings by some means. He created the 'aim peru manram' to punish the wrong doers; For that, some supernatural thing is needed, that was what he was thinking. Suppose if a man steals anything in Pukar city, in the Cola capital, the thing or the material will stick to him and will alerts the people around by creating a sound, to inform about his stealing; so people won't even dream of stealing a thing in that place. Likewise, the externally decent but in mind cowards, the bad prostitutes, illegal ministers, coverting anotherman's wife, saying false witnesses, backbiters will be killed by a demon or monster in the city of Pukar. Even Ilankovatikal was not able to give a solution to cure the tyranny of the king. There was a female statue (ie pavai manram) which will simply cry if anything goes wrong in judgement in the court. The society is not able to do anything with the tyrant and injust.

2.4. The back-bone of the narrative epic Cilampu is the case about the anklet of Kannaki and the Pandyan queen. One is made up with pearls while the other was with gems. And it is proved with the genuiness of Kannaki's anklet. She won the case. So the whole epic was based on the case. It is dealt in 'Valakkurai Katai'

2.5. In those days thieves were killed; that was the law, Pandiyan Netunceliyan remarked to Kannaki that "to kill a thief is not tyranny". Unfortunately sometimes unguilty persons, innocent folks were punished like Kovalan, without knowing the truth and who the actual culprit is. Here we have to think about the chieftain Nannan, who was a cruel tyrant who killed a young girl for having carelessly eaten up a mango washed away by the stream (kuruntokai 292:5)

2.6. An episode in Cilappatikaram details a civil case: Malati, when she gave milk to her co-wife's son, due to hic up, the child died. She took the child to gods to regain and retain his life. A demi god sattan took the form of the child and grew up and married Devanti the lady friend of Kannaki and lived with her. That Sattan had a case with their family members over the right of property; 'tayattarotum valakkuraittu' - 9:31.

(tayam = right of inheritance). Tayam is referred in Tolkappiyam also (Tol. Poruliyal)

2.7. There are two references to the guilty persons being cursed for their mistakes and misbehaviours and Kavunti atikal. The punishment is given immediately, as curse. This may be the legal procedure of the ancient people which may be found in many puranas. It may be taken as myth. Saints and sages, taking law into their own hands is seen in these.

2:8. Cheating is an offence in general. A Yakshini wandering in the forests, came in the form of Casantamalai, the lady companion of Matari, to kovalan and tried to entyee him with her external beauty. Kovalan, by reciting chanting some mystical mantras, found out the truth that she is an yakshini. He went away without punishing her. Even (mystical formulas) mantras are used to find out the culprits.

2:9. Tamils may be knowing about the story of Porkaippandian. The Pandia king used to go around the city every night in disguise and was guarding the people in each house. When a householder went away for some period leaving his wife along in the house, the king was guarding that house particularly every night. One night the husband returned and was talking to his wife; but the king without knowing this truth tapped the door as he heard the voice of a man. The husband became suspicious, as the door was tapped at midnight. The next day the case was taken to the royal court and the King himself announced that he had tapped the door; And to clear the doubt he cut off his hand by which has tapped the door and attained a golden hand in its place. So he was called Porkaippantiyan. In those days the rulers were very clear about their duties and executed the punishment immediately even to themselves. Like at Pantiyan Netunceliyan also dereathed his lost

 when he came to know, that an unguilty person kovalan has been killed. Shedding innocent blood is a crime. So the king punished himself, by giving up his life.

2.10. For every action there will be a reaction for any fault there will be punishment. The punishment may occur immediately or even in the next birth. Kovalan was the cause for killing cankaman, in the previous birth of Kovalan, then called of Paratan. In the next birth the gold smith (por kollan) was the cause for the murder of Kovalan. The fault or the mistake which was committed in the earlier birth, got the punishment in the next birth, that is the concept of Ilankovatikal regarding the legal system.

3.0. There are many laws in the world, such as greek law, Roman law, Muhamadan law, British law, Common-wealth countries law etc.

3.1. As stated earlier, the laws are different from place to place, country to country, and even in one country it is different from time to time. In the earlier time (ie) during the cankam age aborting and considered as a great mistake (Puram 34:2). Nowadays aborting is accepted and approved and advocated in the country. Such is the change of law.

3.2. Now we are ruled by the laws based on British law. We can create our own law according to our environment which may be suitable to our society and execute them in the proper way.

FEW LEGAL TERMS AS FOUND IN TOLKAPPIYAM AND CILAMPU.

(A) Page - No. denotes the page in Law Lexicon published by the Tamilnadu govemment in 1968.

(B) Mere number denotes Tol. Sutram

(C) If there are two numbers the first number is the Katai number and the second line number in Cilampu'

avai - Assembly -p-34, 1370.

anai - order - 1610, 1450, 8-51.

utanpatutal - p.72, agreement 1053.

urimai - (Kilamai (1104) also) Right p.301. 782,
1092, 1093, 1171.

- salve - 2- 88, 6 - 155;

utamai - possession - p- 268, 562, 1140, 1206, 1218.

arankuru avaiyam - Court 5:135.

antanar - judges 22:8

ulakiyal - custamary law - 991.

etir - opposite, 1096, 1128, 1129, 3-87, 8-48;

etam - handicaps 1216, 1403

etitu - Expression with reasons 1153

etu nutaliya mutu moli - reasonable provertial statements - 1421

Kurritai vaitta kurippu - note with the reasonable expressions - 1421

aiyam - doubt - 1604.

oppakkural - equal statements 1610.

oppumai - equality 1057, 1216, 1220

arakkalam - court, 22:8

aramkurraraiyam - Court, 5:135

antanar - judge - 22:8

urai nul - jurisprudence p 202; 5:136

uru - hurt p. 178, 1156, 1082

ellai - boundary line p.50, 1336, (1408,1403) 26-216, 27-12;

ennam - intention - p.27; 1610.

erpu - acceptance - p.6; 1539.

irai - sovereign - p.319; 20:26; 23:53; 25:88

- Sovereignty - " - tax - 5-100, 26-52

alai - Teasing by Physical Chastisement 1204.

urupparai - mutilation of the body 1204

arivu mey niruttal - establishing the truth - 1114.

urutikattal - showing the confirmation - 1114.

etuvin unarttal - enlightening with reason - 1114.

aimpernkulu - committee of five members 3-126, 5-157, 26-38;

enperayam - Committee of eight members 5-157, 26-38;

amaiccar - ministers 5 -130, 26-3

- King 19-3, 20-7, ...

aram - Virtue - 10 - 200, 27 - 100

araytal - the act of investigation 7-1-5

ikanta - deviated from justice 18-44, 25-96;

ilukkam - fault, violation of social and caste rulers 23-41, 23-53;

Ilaiyar - guards 23-101, 113;

uyti - expiation 10-240.

ennam - consideration - 3 - 95

erru - reason - 24-4-1;

en - " 24-5-1

etam - fault - 15-124;

etu - cause - 30-5;

aiyam - doubt 13-186;

ompal - the act of protecting 16-71,

Kalavu - stealing 17-33-3; 30-197;

Katan - duty 9-22, 23-117.

Kataippitittu - having understood correctly 3-30, 40,158;

Karavu - theft 16-189

Kattal - protecting 5-163;

Kaval - protection 2-47, 5-63

Kurram - fault 7-14, 9-52, 14-194;

Kolai - the act of killing 1204, 16-163, 18-28;

Kotal - the act of abducting 8-62

Kutikol - robbing the subjects 1204,

poy - false, 1091

tayam - paternal relationship 9-31, 23-144

Valu - fault - 1091

Valakku - Case - litigation - 9 - 31, 25.72.

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14 THE COURT OF JUSTICE IN CANKAM LITERATURE

Dr. K.V. Balasubramanian

The modern judiciary has been developed to an excellent establishment which helps enormously to drive the society in a fine legal track. The written legal codes the IPC and CRPC, the interpretative arguments of the intellectual advocates, the impartial judgements of the learned lords, the appealing rights, the amendments brought by the Government then and there and above all the executing authorities who enforce the judgements are all the various faces of the modern judiciory. Such an evolved well developed establishment would not have been brought in a few decades. Though the European contribution to this side is sizeable, the indigenous base, the underlying spirit of morality of the local soil could not be discarded while estimating the evolutionary stages of Indian judiciary.

The righteous sentiment, the unfailing adherence to a moral standard, to the dictation of conscience of the individuals held an unwritten code in the age old life of Tamils. The King, the Supreme authority of law had been thought as an incarnation of the Almighty because it was he who impartially enforced the decision taken according to the conventional law. 'Yadha Raja Dadha praja'and 'Mannan uyirthe Malar Thalai ulagam' are the atributes which show the unquestionable monarchy of a king.

Though the whole of India hailed 'Dharma' all above the virtues, the ancient tamil land held it as the soul of all activities. The search of wealth, the enjoyment of pleasures and all other activities should go through the path of righteous deeds. Even in battlefield ethical codes had been strictly followed. A true warrior should not drive his weapon on the back of an apponent or on the heavily wounded.

> The cattle and the brahmins of that nature,
> Women and the diseased and those
> who do not have children of golden worth
> To do the funeral rites after death
> Reach the fortress as may arrow spins,
> Such is the righteous way of war[1]

This is an open announcement of a King of the classical age in the warfield. Even a strategic retreat is being considered to be a matter worth to be ashamed. A scholar while describing this nature observes thus:

> certainly turning one's back to the enemy
> is a disgrace if it is a sign of fear

or cowardice. But the cankam poets seem
to take the expression too much in a literal
sense, so as to leave hardly any
room even for a strategic retreat[2]

A literary expression would have atleast a pinch off exaggeration but the basic truth, the righteous way of war is neither an illusory nor an imaginary one. Either in Mahabharata or in Ramayana instances of a different nature could be found. Even Dharmaputra, the son of the righteous God lies to kill one Aswathama by foul means. The great Krishna engineers all kinds of unethical and unfair activities to write off the evil side and is being hailed to be the representative of Dharma. In Ramayana the great Rama kills vali from a hide out and had been adviced to kill a lady demon by Viswamitra a saint. There are compromising explanations for all these deeds but however the cankam culture did not hesitate to condemn and reprove the uncustomed and unjustifiableactivites of a few persons found very rarely among the decency of the aristocratic class. Expiable and remedical measures have been suggested to almost all sins in the ethical codes in Sanskrit. Of course one verse of Purananuru suggests such expiations and it also points out that forgetting one's benevolent act is not expiable and it has no remedy at all. One Kovoor Kizhar finding the umbrella of Nalangkilli the Cola king held above the umbrellas of other two great kings praises the feature thus:

As like wealth and pleasure go by the virtue of Aram
According to the celebrated convention
The Umbrella held above the other two[3]

From this we can rightly understand that the righteous Dharma had been the everflowing undercurrent of all activities of the life of the ancient Tamils. This underlying spirit is the base of the legal proceedings of the court of that day The law of Dharma had been in full consonance with the law of the court and there were no intertangelements between the two.

THE CODIFICATION OF LAW

We have the fullest right and possibility to infer that there had been a codification of law which is not available today.

Saint Thiruvalluvar observes,

In all the scriptures we have seen no such is
as good as truth[4].

So, many scriptures would have had their existence in those days. Dr. Birandra Nath points out that,

"It was in about the 6th cent, B.C. or a little earlier that Indian law began to attain codification. The Dharmasutra writers taking vedic traditions as their source and honouring the views of Manu, laid the foundation on which the structure of Indian law was raised by Kautilya, Manu and Yajna Valkya, and later refined and elaborated by Narada, Brihaspati and Katyayana. It is mainly on the basis of the works composed by these law-givers that we are enabled to present an acount of the judicial system of Northern India prevailing during the period under review.[5]

This statement is clear of two things. The codification of law in the Northern India had occured only in the period of Guptas and it did not cover the whole of Indian peninsula. The South had a different code with which it could have had its administration[6]. As Dharmasastras are concerned, P.V.Kane opines that two great works, 1.a work on Dharmasastra composed of Svayambhu Manu and 2. a Rajadharma by prachesta Manu had existed by 4th century B.C. The Manu smriti written in a later period, evolved from the Vedas and other works was regarded as an authoritative smriti and Manu the author of this work was considered to be the first expositor of law and he was reverently mentioned by other smiritikaras in the Pluralis majesties. The Arthasastra is a product originated according to the changing nature of law in the march of time. These works differ much with the justice afforded in the Court of Tamil Kings. Bandopadyaya a critic of Kautilya observes, that Kautilya did not consider moral and ethical codes as an important factor for the administration of a state and he has done the great mistake of exposing and enumerating all the evil means as Rajadharma. So gruesome murders, fradulent deceptive and defamatory acts to usurp a throne from a father or a brother had been justified by this work. The legality that had been followed in the Tamil Court had a different way and though a codified manual is not left behind, the Thirukkural could be considered as the quintessence of the legal tests that had been in vogue in these days.

JUSTICE IN THE COURT

In Cankam age the King is the Supreme authority and it was his bounden duty to spare a sizeable time to hear the complaints of the subjects and to discharge the duty of justice to the needed. Ariyapadai Kadantha Nedunchezhian the Pandya King himself heard the case of Kannagi and after knowing that he himself had swerved from the path of justice, laid down his life at the alter of justice. A rare specimen among the ruling class who to the dictation of his conscience shed his life that had been highly sensitive to the ethical way of life. This episode though not mentioned in Cankam literature belongs to that age and it is brought in detail in Cilapathikaram. The king might have given the

power of attorney to administrate the Court activities and this is mentioned by a Pandya King. The King declares that if he fails to contain his foes in the declared war let him be the one who appointed an unworthy to do injustice in the Court[7]. From this we can understand the propriety and the honesty of the head of the court appointed by the King. The court of olden days had two separate bodies to enquire and execute the cases of the public. One is Imperungkulu and the other is the Enperayam. The former is said to have consisted the minister, the purohit, the ambassador,the spies and the Chief of the army. The later is said to have consisted of skilled artists, worker, treasurer, security. Public, Chief of the army, mahout and the rider of the horse. All these have no internal evidence and their portfolois have not been demarceated in cankam classics. But it is leant that distinguished nobles attaining the title "Kavithi' conferred in reverance for their accomplishments used to serve as ministers and judges of the court. The Imperunkulu comprising such nobles is called 'Panchamavarkka' in sanskrit and scholars observe that no such political organ is available in the North and Panchamavarkka is only a transalted terminology originally owned by Tamil[8]. The Court that afforded the justice was called as 'Arankuru Avaiyam'. Madurai Kanchi tells that

> Removing the fear grief and desire,
> without having envy and pleasure,
> Impartial like the sceptre of the God yama;
> The splendid court of justice

had been dischaiging its duties. Mudathamakkanniyar a renowned poet tells us that the elderly people removed their inimical attitude even when they entered the Court of Karikala9. It was believed that the God himself had come as the king and had occupied the throne to render justice and he had been doing without any delay and it was like the raining when needed.10. The King was easily to be seen by the public. Kalithokai tells that the pronouncing the very name of the king was able to bind the people[11].

PUNISHMENTS

The punishments imposed upon the culprits differed according to the severity of the crime. The sentence of death, levy of certain amount or gold as fine, imprisonment, are some of the punishments of those days. Cutting off one's head, treading by the foot of the elephant, were the ways of imposing the death penalty on the culprit. These sentences did not vary according to their caste and Varuna. This is the notable difference of approaching a crime by the ancient Tamils in contrast to the Kautilya's Arthasastra.

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Shaving the head of a brahmin is equal to a death sentence. Others deserve only death Whatever be the crime done by a brahmin, usurp his possessions, drive him away from the place and do not kill him [12].

This is the advocacy made by Manusmuriti and such approachment is entirely unknown to the Tamil Court.

LOCAL COURTS

The local courts in the villages assembled at the foot of a tree, enquired the cases and pronounced judgements which had been accepted by the inhabitants of the area. The banyan tree with its spreaded branches and the cool shadow had been the seat of the jury and this is called the 'Pothiil'[13] Pazhaian a Chieftain of Molur appointed the 'Nalurkosar' as the judges of his court and they had been praised as unfailing jury (onru mozhi Kosar) and there are several references about them in Akananuru and Kurunthokai[14]. It seems that even cases of love affair had been brought to such courts and even to the assembly of the king.[15] There are certain references about the witness in the cases. It is that the nobles never fail to say what they know.[16]. A lady who had an intimacy of love with the youth feels much about the absence of a witness at the time when she had been in the embrace of him. Examination of witness and of the ownership of the disputed article, had been done in the court and Cilapathikaram bears ample testimony for this. A thorough inquiry had been conducted in all cases either in the local courts or in the assembly of the king.

LAPSES

The length of history of the Cankam period had negligible number of lapses in the discharge of justice to the public. A renowned cera king had been ill treated by the jail attendants refused the privilege of getting the drinking water in time is known through Purananuru[17]. The cruel death sentence imposed on a lady by Nannan for the petty reason of eating the mango fruit of the protected tree is mentioned in Kurunthokai[18]. The death penalty imposed on Kovalan without proper investigation, the plucking of eyes of Anne Gnimili's father for he had allowed the cattle in the field of pulses are deliberate lapses on the part of the rulers. Some such misdoings had been forbidden by learned scholars like Kovoor Kizhar. Like the mercy petition of the present day, scholars used to intervene in the affairs of the judiciory and tried to save the punished and they pleaded for only the innocent.

The cankam period had a fine system of judiciory the ingredients of which have to be inferred to a large extent from the availabe literary sources. The spirit of estabilishing the righteous dharma stood above all two factors and the Kings had estabilished it in their courts could not be challenged at any rate.

FOOTNOTES

1. Purananuru 9:1-6
2. Goerge P.K. Fr. A comparative study of the Cankam Literature of Tamil and the Golden age Literature of Lating. Unpublished thesis submitted for Ph.D., of the Annamalai Universtiy 1977.
3. Purananuru 31:1-3
4. Thirukkural 299
5. Birendra Nath Dr. Judicial Administration in Ancient India P.2.
6. Bhatia H.S. Origin and Development of Legal & Political System in India P.Q4
7. Purananuru 71:7-8
8. Subramanian N. Sangam Polity P.a7
9. Porunaraiuppadai 187-88
10. Puranaruru 5[illegible] 35:14-16
11. Kalithokai 94:36
12. ManuDharma Sastram, Tamil by Thiruloka Sitaram P.255
13. Akananuru 251:7-8
14. " 196:10 205:8-9 262:5-12
15. Kurunthokai 276:5-6
16. " 184:1
17. Purananuru 74
18. Kurunthokai 292.

17 LEGAL ASPECTS IN PERUNKATAI

Dr.R.KASIRAJAN

The sangam classics and the ethical works of the Ancient Tamils, have little reference to judicature. Instead of Cattam (*சட்டம்*) the word aram (*அறம்*) and Nithi (*நீதி*) are frequently used in the works of the Tamils. Moreover the judicial court is also named after `Neriman Avaiyam' (*நெறிமாண் அவையம்*), Arankuru Avaiyam (*அறங்கூறு அவையம்*) Nalolakka Mandapam' (*நாளோலக்க மண்டபம்*) etc. During the Bhakthi period, the temple had also functioned as a court. The king alone acted as the judge in ancient days whereas the aged, intellectual Brahmins of integrity replaced the king in the village court during medieval period.

The secular Sangam Society strictly followed the social justice in its day to day affairs. Hence the judicial crisis occured very rarely in that period. However in the post sangam period this crisis slowly made its existence, due to the evolution of different religions and philosophical attitudes. With the passage of time, the religious institutions and the schools of thoughts had forcefully preached their doctrines for their existence. In addition to that, there was a necessity to turn the attention of the public and the king towards them. The net result was that there erupt religious disputes and social uncertainities. Crimes and the criminals polluted the society to a considerable extent. The epics and other literatures profusely exposed the collapsed situation and tried to reform the society. Great thinkers and philosophers also took efforts in this direction.

While dealing with the human crimes, ethists differ in their remedial measures the philosophers and the vedic priest gracefully followed the anpu Marka (*அன்புவழி*) whereas the Jains and the Buddhists suggested the other marka - the ethical way (*அறவழி*). According to the vedic tradition,the medieval plates and inscriptions suggest the remedy either by lighting ' Nantha vilakku or by donating lands and gold coins to the temple for the human crimes. Epic Perunkatai, though a Jain work also putsforth the same type of remedy for the crime as a punishment. Many such references are there with regard to the law of justice.

"நீதிப் பெருமை நூல் ஓதியும் ஓராய்
யானை வேட்கையில் சேனை நீங்கி
பற்றா மன்னனின் பற்றவும் பட்டனை (பொருள்: 2:1:25: 27)
"நீதியாளர் ஆதி யாகிய
திறத்திற் காட்டவும் மறத்தகை அழுங்கி (3:1:36 37)

நீதியான நீ வேண்டுவ வேண்டென (2:17:184)
நீதியிற் காட்ட (3:12:46)

யூகி நீதியிற் பேதை பிணிப்புண்டு (2:20:54)
நெஞ்சிபுரை அமைச்சன் நீதியிற் செய்த
வஞ்சம் இது என (2:17: 92 100)
நீதியும் வினாய் (3:18:60)
ஏதில் பெரும் பொருள் நீதியும் இன்மையின் (2:19:217)
நீதியாக நேர்மை (2:8:140)
நிலவரை நிமிர்வுறு நீதி நிற்க (1:54:65)

These references express the views of the Jains who strictly adopted the law of justice in their life.

Perunkatai speaks of the legal rights of the bathing pond which was prohibited for the public. It was exclusively meant for the princely society to bathe.

In case, a person violates he has to pay penalty of a golden toy of his weight, as a punishment.

"இத்துறை மேல் எத்துறை யாயினும்
ஆடன்மின் யாவிரும் ஆடுவீர் உளர்எனின்
ஆடகப் பொன்னின் நும் அளவின் இயன்ற
பாவை யாகும் படுமுறை" (1:41: 370 73)

In addition to this , Perunkatai depicts three different types of criminals viz: The one who acts against the King, the other one who harms the Kith and Kin and the third one a thief. These criminals will be released from the jail only on special occasions like the festival.

Other two judicial cases - one directly the other indirectly were placed before Utayanan for his judgement in Perunkatai. Of the two, the one on Cankiyattai is a criminal case. The other case appealed directly by the two merchants is a civil one dealing with legal rights.

The Criminal Case of Cankiyattai was brought to his notice only through the trumbling sounds of the courtier who persuaded the court order of immersing Cankiyattai into the river Yamunai. Utayanan stopped the punishment and enquired the illicit relation of Cankiyattai, a brahmin married woman, at the time of her husband's long separation. She has committed the mistake only when her husband abandened her immediately after the marriage was over. She, being an innocent and a young girl, her mistake is not an unbearable one. Moreover, she alone is not responsible for the crime. Her husband who left the young wife is also partically responsible for the crime. But her society doesn't take these aspects into account i.e. both side being responsible and blames her alone by appealing to the King's Court of law. Without having any enquiry with the defendant the King's Juristicture immediately pass an order of punishment favouring the plaintiff. Also the court announces her illicit relation all over the city.

From the feministic point of view, this court order is a palatable one - not only to Cankiyattai but also to the women folk. This favouritism reflects the male dominated society.

With all these intentions in mind, Utayanan reconsider her case, with an enquiry of her future plan if alive. As per her willingness, Utayanan allows her to live as a sage by making penance throughout her life. This judgement, though some what better than the other,is also onesided, injustice and degraded the women folk.

The other civil case concentrated on the legal property rights of woman. Here comes an episode of three brothers engaged in different trades. The elder brother earned money through foreign trade, while the other one, by inland trade and the last one by seasonal trade of having stocks of imported goods. Meanwhile, the elder brother lost his life because of the storm in the middle of the sea. He with his boat and men sank into the sea water.

Though he was a married man,his property was under the custody of his mother. The other two brothers, after the death ceremony was over, wanted the mother to handover the property to them. But she refused. Hence the case was taken to Utayanan for justice. King Utayhanan entrusted the case to his loyal minister cum friend Urumannuva for further enquiry. The minister deeply investigates the case only with the plaintiff. He is informed that the wife of the dead person is alive but she doesn't believe in her husband's end since no eye-witness is there to prove the accident. Moreover she doubts about the total destruction of the ship. Further more, the minister comes to know that she is pregnant. Hence, Urmannuva requests the plaintiff to wait till she gives birth to a child. He has given a judgement as follows: If she begets a male child, the question of sharing the property doesn't arise, since the son has the legal rights for his father's property. In case, she begets a female child, it is the duty of the brothers to take care of the child with her mother till marriage. When the girl gets married, the brothers can share the remaining property equally after disposing maintenance to both the mothers.

This judgement of Urumannuva also denies the property right of women. In both cases we explicitly know that women were neglected in the legal acts of the medieval period. They were given only a secondary status in their social life. Even in a complicated situation, their illicit relation is legally condemned with undue punishment, whereas the vice-versa happens in the case of male. Thus Perunkatai clearly pictures amale dominated society and the judicature is for the protection of their vested interest. The male was allowed to marry more than a wife. Dowry system was also prevalent in that society. *(பிரச்சோதனன் பண்ணி காரம் விட்டது)*

On the other hand maintenance given to the bride as deviviruthi (4:9:65-70) and her mother (4:11:35-46) by the bridegroom was a notable feature found in Perunkatai. This system was not spoken of in the early Tamil literary works. Hence the society as delineated in Perunkatai a male dominated one doesn't respect the feelings of the female folk, not only in the social life, but also in the legal activities.

works. In the story of Sibi we come to know that the king gave an assurance to the dove that he will protect it at any cost. Accordingly he stood on the plank of the balance and gave the equalent of dove's flesh from his own body. He has maintained the legal administration of the land.

In Manuneethi Chola's story it is told that the Chola King gave a judgement in a case involving death of a calf. He himself drove the chariat over his only son and respected the law of the land. This story gradually became a myth and Ilango Adigal uses this in Silappthigaram. These incidents became the myths of the society which respect the natural justice. Even the story of Silappathigaram become myth and respected by the poets who followed Ilango Adigal. These myths found place in the literary works of Sri Lanka, Sumitra, and Kerala. King Pandian made a mistake in pronouncing the Capital punishment to Kovalan, after hearing the false information given by the goldsmith and Kovalan was slain. On hearing the arguments of Kannagi, the King felt sorry and ashamed of his mistake and he put an end to his own life to protect the law of the land and his dynasty.

Further, there are some folk stories like Mariyathai Raman stories which dwell on cases, dealt with and judgement pronounced by Raman. For example, a wealthy woman borrowed some quantity of ghee from a poor woman. saying that she will return the same after a month. But she did not do so. The poor woman took the matter to Mariyathai Raman. Mariyathai Raman enquired the wealthy woman and she explained to Raman that she already had enough money and have much ghee with her and there was no need to borrow ghee from a poor woman. Then he invited the two women for a dinner. In front of the house the made a sludge and kept two pots of water for the two women to wash the feet, the poor woman washed her feet with one pot of water very cleanly where as the wealthy woman could not do so. He came to the conclusion that the wealthy woman was a spenthript and gave a judgement accordingly. There are so many stories available in this past of the country which focus on the legal administration.

Further, "the curse of the Sages" that come across in mythical and religious stories can also be said to suggest a sort of administrative method of those days.

In Kambaramayana we come across the myths of Agaligai and in Silappathigaram that of Goundhi Adigal. In the former Sage Goudama curses Indira and Agaliga and in the later Sage Goundhi Adigal curses the Parathai and Parathen. These incidents be can also come under the perview of legal administration.

With these findings we can conclude this paper, Myths are used by the folk for the betterment of their life. Some of these stories have also influencing the legal authorities in giving judgements.

19 LEGAL ADMINISTRATION THROUGH FOLK MYTHS

Dr. M.KOTHANDARAMAN

The term myth is derived from the Greek 'Mythos' is described as a fictitious or imaginary narrative person or object as opposed to the logic. Myths are also conceived as natural phenomenon, a historical event or development, the social structure, the religious - gods, demons, heroes etc., the rites, the supertitions and beliefs etc.,

Myth is formed on the basis of beliefs and imaginations of the people. Myths varies from group to group. Further we can understand that Myth is a collective term used for one kind of symbolic communication and specifically indicates a basic form of religious symbolism as distinguished from symbolic behaviour and symbolic places or objects.

"A story presented as having actually occurred in a previous age explaining the cosmological and supernatural traditions of the people, their gods, heroes, cultural traits religious beliefs etc., The purpose of Myth is to explain matters in the science of a pre-scientific age." Thus Myths tell of the creation of man, of animals of land marks.

Myths has become one of the most prominent terms in contemporary literary analysis. A large group of writers, the Myth critics - including Robert Graves, Francis Ferguson, Richard chase, Philep wheelwright, Leslie Fielder and Northrop Frye view the genres and individual plot patterns of all literature including what on the surface are highly sopisticated and realistic works as recurrences of certain archetypes and essential mythic formulas.

In other words myth is a specially created word to represent a popular event or a person which runs years to come and generations to come. Myth is regarded as social necessity to guide the people to a glorified path. Some times in an estended and complex sense myth is also used as a synonym for belief, supertition or convention or atleast a part of it.

Molinowski says that myth is an active force and a constant by product of living faith which in need of miracles of socialogical status, which demand precedent of moral rule which requires sanction.

Each community has its own body of myths which are the products of the primitive beliefs and culture.

Myth is the most ancient form of human collective thought. Every civilisation of the world even of the most primitive kind has its myths which members share in common and reverence.

LEGAL ADMINISTRATION FOUND THROUGH MYTHS

Before the advent of institutionalised legal administration, people mostly had beliefs based on some myths or the other. In Kaveripoompattinam there was a demon called Demon of the square which stood in the middle of the city and used to punish the guilty who crossed the central point. This is mentioned in Silappathigaram. This story was taken from a myth prevalent in Tamil Nadu and included suitably in the epic by the pact Ilango Adigal. This shows that the people of those days were afraid of doing wrong deeds. They were afraid of chadukka Bhoodam as it was considered a god sitting in Judgement on them.

There were no written civil code procedures in the olden days. The King was worshiped as god and he was considered a representative of the God. People thought that the king could do no wrong. That is why a proverbial myth is prevelent in the society of Tamil Nadu.

In Purananuru we find an evidence of this theory.

> ."Rice is not the life and
> Even the water is not the life
> Only the king is our life on the
> Flowery earth."

நெல்லும் உயிர் அன்றே; நீரும் உயிர் அன்றே;
மன்னன் உயிர்த்தே மலர்தலை உலகம் (புறநானூறு : 186)

Vallurar also was of the same opinion, he says

Behold the king who administereth impartical justice and protecteth his subjects; he will be looked upon as a god among men.

முறை செய்து காப்பாற்றும் மன்னவன் மக்கட்கு
இறை என்று வைக்கப்படும். (திருக்குறள் : 388)

These statements show that the people bowed their heads before the king who were the custodians of justice, the protectors of the laws of the land.

Further, we come across a judgement pronounced by a Pandian king Kovalan was given capital punishment when the chief goldsmith reported about the theft to the king. When Kannagi argued with the king that her husband was innocent. The king explained to Kannagi that the law of land was to give capital punishment to the thief. This story became a myth in Tamil society. Here also we come to understand that the kings were the real legal administrators of the land. Again Silappathigaram mentions two myths as incidents. Kannagi arguing with the king. Reffer to Sibi Chakravarthi's story and the story of Manuneethi Chola. From these two stories we learnt about the legal administration of those days. These stories are used as myths in the later literary

JUDICIAL COURT HALLS OF TAMIL NADU : HISTORICAL AND ARCHITECTURAL PERSPECTIVE

Dr. RAJU POUNDURAI

Architecture plays a vital role in the economic, social and cultural life of Tamil society and would help us to trace the historical changes and reciprocal influences between different socio-cultural units and complexes within the social system. In this context, a research paper on "Judicial Court Halls of Tamilnadu: Historical and Architectural perspective" is attempted here.

The Tamil Sangam anthologies of the early centuries of the Christian era furnish several references about court halls of the king and manrams of the common people. The court halls were well furnished and decorated with gems of brilliant colours. A separate place was assigned within the palace for Judicial Court Halls in the capital cities of the kings. Generally, the palaces were consisted of five great assemblies and the courts of law presided over by learned Judges who carefully shunned all anger, partisan outlook and prejudices. They scrutinized the evidences and maintained the law of the land. The Vastu texts also abound with references to palace court halls and its construction. In this paper, a special study on layout and design of palace court halls has been take to highlight the historical development of the traditional court halls of Tamilnadu.

The purpose of this paper is to take into consideration of various literary, art and architectural sources to highlight the legal heritage of the Tamils.

COURT

"Court is a word originally denoting an enclosed place and serving in its architectural service".[1] Generally, a court is a place where justice was judicially administered. In Indian tradition, the courts were called dharmadhikkarana, dharmasthana and dharmasana.[2] But in Tamil tradition the courts were called as sabhai (sabha), manram, ambalam, avaikkalam, etc. The sabhai, generally in ancient Tamil tradition, was the king's hall of Justice. The manram signifies a law court with the guardian deity of justice housed therein.[3]. It explicits the design of the court hall of the late sangam period. Generally, manram was also used as a public hall, a public place of worship. The ancient manram in sangam period was an open space in which the judicial proceedings were held at in public place of the village. It shows that the ancient courts enclosures were temporary structures in the open field and later on the courts were constructed in a large room or hall for Judicial proceedings.

Sangam Tamil literature speaks about manram and ambalam of the kings. The court hall avaikkalam of the Kosalars of sangam period has been mentioned in Purananuru.[4] But the structural style has not been clearly stated. The public place was also called as ambalam. An interesting reference in Narrinai[5] speaks about the public meeting place for common subject of the village people. But the construction techniques has not been given in the literature.

The palace of the Chola kings in Kavirippumpattinam is described as a magnificent architectural example of Chola period. The Chola's court hall was well decorated and the walls are covered with plates of gold. The court hall was supported by pillars. The pillar's shafts and capitals adorned with coral and gems of brilliant colour. The roofs are decorated with strings of colourful pearls. Another an interesting reference states that the hall of state was furnished by the king of Magadha and the palace gateway was presented by the king of Avanti. (Manimekalai. xix.107-109).

Two interesting ancient epigraphs from Tamil country dating back to 8th-9th centuries A.D.[6] give us a vivid picture of the judicial disposal of civil suits by the kings. Both epigraphical evidences are related to the early Pandya period. These two epigraphs are: (i) Velvikkudi grant of Parantaka Nedunjadaiyan and (ii) the Dalavaypuram grant of Parantaka viranarayanan.[7]

PALLAVA COURT

The king was the head of the judicial court and has got all powers to control over the court of his country. The Mattavilasa Prahasana furnishes the information that the Pallava Judicial Court at the city of Kanchi was known as Adhikarana.[8] The place of the court was known as adhikarana mandapa. The world 'dharmasana' literally means "judgement seat" but later Pallava inscriptions [7] reveal about an organised judicial body or law court. It seems to be a judicial court of the Pallava kingdom. But the epigraphical evidences are not given any details on architectural history of court halls of the Pallavas.

THE BELL OF JUSTICE

Bell mandapa in front of the king's court hall was common traditional from is Pandya and Chola countries. The story of Manuneethi Cholan and the symbolic representation of architectural designs and forms of ratha (car) are very popular idiom in Cholamandalam Art. The architectural style of the ratha (ter) at Thiruvarur is famous for its story and art. The bell of justice in Pandya Country was also prevalient. There are large bells housed near the palace court hall or gate way of the King's Palace Complex. People who had a lodge a complaint should strike the bell. Then their names are registered and their cause is investigated.[10]

In Chola country, the sabha or mahasabha usually held its meetings in the temples and mandapas of the village and the term Brahma-sthana appears to indicate the fixed meeting place of the sabha. Sometimes it may be met outside the village, on the banks of a tank or under the tree. The sabha was usually summoned by the beating of a drum. (sarri) bugle (Kalam) or irattaikkalam. Meetings were also held at nights when required. The Dharmasana is mentioned in several Chola inscriptions in Tamil Nadu.[11] Hence, it is a popular traditional aystem which was more prevalent in medieval Tamil Nadu.

THE KING'S JUDICIAL COURT HALL

The King was the highest and ultimate tribunal both in civil and criminal matters. He was the highest appellate court and his decisions were always held as final and binding. The King's Court was, generally, held at the capital and was presided over by the king himself or the council.

The Court hall of justice in the capital city or fortress was to be located into the east part of the palace and has to face in the eastern side of the palace complex or in the fort city. The court edifice of the king should be placed in the middle of the fortress.[12] This point can be compared with the Thanjavur Fort plan (fig.1). These references explicit the location of the court hall and the direction of facade of the king's court hall within the fort or palace complex.

The judicial court halls should be decorated with statues, pictures, idols, jewels, garlands, furnished with a throne, ceilings, roofs and pillars.[13] Manu states that the king should repair to the hall for the justice.[14]

Apastamba Dharmasutra states that an assembly hall sabha should be built on the southern side of the fort. The doors of the sabha must be placed on the southern and northern side of palace complex[15]. It also further says that the palace should built in the centre of the city and should consist of many chambers with underground passages for security of the king. This principle has been adopted in the construction of Maratha Court Hall of Thanjavur Palace. The samarangana sutradhara says that the king's seat of justice (dharmadhikarana) should be place in satya part of the traditional layout.[16] The Visvakarma Vastusastra says that the court hall of justice should be placed on Bhudhara or Rudra in the second or their enclosure. These edifices are also known as Paursdesya sabha (Court Houses).[17] Manasara states that the court hall and coronation hall should be built in the central part of the palace complex (fig2.2.a)[18] The court hall should consist of tribangena i.e. rectangular in style with pillared facade and the king's court hall throne should be built in the middle part of the palace (fig. 3 and 4)[19].

COURT HALL DRESS

Manu prescribes that the king should be fully dressed and with an undisturbed mind after taking his seat in the hall of justice, should perform obeisance to the gods, the guardians of the eight quarters[20] and then he has to commence the judicial court.[21] Yajnavalkya states that the king should wear no gaudy dress or ornaments when he enters the sabha.[22] Manimekalai (1-494) states that the presiding Judge in each court wore a peculiar hear gear by which one can distinguish from other officers of the court.

VIJAYANAGAR COURT HALL

Dr. Nagaswamy states that "the nayaks of Thanjavur and Madurai tried to uphold the path of the dharmasastra but they were themselves the victims of this artifical halo. However, we find that the dharmasastras played a vital role in the Tamil Society from 7th to almost the end of 17th century A.D."[23] A few references of Vijayanagara Court Hall give us a glimpse of the design of the hall and kings throne hall decorations. The king's appear to have used cushions for sitting in a narrow vestibule. He was seated on that mat and leaning against a pillow. Next to him the crown prince was also seated. Right and left of him stood a large number of crowd of men arranged in a circle. The upper surface of the platform of the court hall shows traces of the existence of the six rows of pillars, each row containing ten pillars, for there are to be seen sixty base on which the pillars probably rested. Abdur Razzak gives a picture of the hall that was elevated above all the rest of the lofty buildings in the citadal.[24] The total number of the pillars in this court hall is sixty but the architectural vasta text states that the court hall should consists of the 16 to 48 pillars. This columned system is not suitable for this court hall. 'But it needs furter studies in this comparative analysis.

THIRUMALAI NAYAK PALACE COURT HALL

The fortification of the Madurai City was built in the 14th century A.D. Thirumalai Nayak, the seventh King of Madurai Nayak, line was responsible, for the constructional work and the reconstruction of the palace complex. The main hall measure externally 450 feet by 250 feet by 150 with coloumned aisles on three of its sides and the great Dharbar hall and Throne hall on its remaining side (Fig.5). The whole scheme is situated in the central part of the medieval city of Madurai. The principal court hall is built with a courtyard which measures about 160 ft. east and west by 100 ft. north and south, surrounded by arcades of very exquisite pillars. The massive round pillars which support the arches are of stone, 40 fit. in height and are joined by foliated brick arcades adorned with elegance of decorative designs and carvings. The cornice and entablature of the court hall is rising upwards of 60 ft. in height which makes it a

meganimous look. The pillars and ceiling ornamentation is worked out in fine stucco called 'Chunnam' or shell lime, which is characteristic of the Chettinadu "neethu chunnambu". On the west side of the stands the "Swarga Vilasam" or celestial pavilion which measure 235 ft. from north to south by 105 ft. across. The hall is designed very much on the plan of a typical great mosque with three domes. The large central domes of this court hall is supported by twelve columns enclosing a square 64 ft. across. These coloums are first linked to gather by massive arches. Four similar arches are then thrown across the corners. Above this at the cornice 45 1/2 ft. up, the actagonal is changed to a circle and the dome rises in the centre to 75 ft. from the floor. At the north west corner of the main building is placed the splendid hll. This hall itself is 125 ft. long by 69 ft. wide and its height to the centre of the roof is 56 ft. Fergusson states that "it possesses all the structural propriety and character of a Gothic Building. It is evident that if the Hindu had preserved a little longer in this direction they might have their masters in this form of art".[25]

THANJAVUR PALACE COURT HALLS

It is interesting to note that there are about thirty buildings within the palace complex obviously intended for various purposes. The construction of a bewildering services of large and rambling buildings in the palace show that they do not seem to have for its construction. Henceforth, the general impression of the historically much important place of Thanjavur palace has left on the mind being of something great and curious rather than equisitie. Generaly, most of the palace building in the Thanjavur palace complex are said to belong to the Nayaks.[26] On the northern corner of the palace there is a Nayak Dharbar Hall (Nayak Court Hall fig 4.). Though it is not much osentatious in into general scheme of decoration than the Maratha Dharbar Hall (Fig.3), the massive column are erected to support the facade which in turn are lavishly decorated with magnificent panel of plastic figures. In front of the hall, there is a remarkable slab with exquisite sculptures and reliefs depicting devas and asuras and slabs adorn the platform over which stands the marble statute of Raja Serfoji II. The walls of the Dharbar Hall are decorated with several paintings of floal designs.

The court halls of Marathas in the centre of the palace complex to day exhibit exquisite architectural master pieces.[27] The Maratha court hall consists of two mandapas. The front mandapam is supported by wooden pillars and the second hall is approachable by a couple of steps which lead to the throne platform of the second mandapa of court hall (fig.3). It has a lofty vaulted roof, circular in shape and supported by pillars. The pillars stand on granite stone podium and plastered with thick lime and brick which is painted with an exuberent tone of red and

blue hues. The valuted ceiling is interested into a number of bays which look fascinating. It recalls the European Baroque style of paintings and also indicate the influence of British Supremacy over the Thanjavur Kingdom.[28]. In front of the Maratha Court Hall, there is an court which was once a stadium for amusements. To the northern and sourthern of the enclosure of the court hall exist latticed windows from where the royal ladies witnessed the proceedings.

SADAR MAHAL

A majestic building is standing in the East Main Street is called "Sadar Mahal". It is in the palace complex consisting of five storeys. It is also called "Huzur Mahal". Huzur Mahal is buuilding for the king residence and a part of the building consists of 'sabha or Raja Hall' meant for conducting proceeding of the court.[29] The ground floor was constructed by the Thanjavur Nayaks. It is made of stone pillars and roofs. After the Nayak period it had been developed step by step throughout the period of Marathas. There are references in the Modi records saying that the top floor and the Thulasi Madam were constructed during the Serfoji II (C.1812).[30] The pillars supporting the halls are massive and circular in style. Some of them are adorned with sudai sculptures. The ceilings are adorned with geometric designs and sudai decorations. The wooden pillars recall the Ionic style but the capitals belong to Cornithian order. The bay windows are made in latticed pattern.

A painting of the court hall of Maratha of Thanjavur Palace Complex[31] is the most interesting example for the court hall architectural tradition in Tamil Nadu. It reveals the Nayak style of court hall construction with intricate designs in both shaft and capital part of the pillars. Generally, the court hall pillars are more decorative. The court mandapa consists of misra type of pillars and the front hall consists of wooden pillars with decorative capitals and ceilings. The ceiling is adorned with overhanging screens but the front part of the hall is wide open. The entrance of the court hall is built with stone steps. The central part of the court hall is used for throne with arched wooden roofs. The ceilings are decorated with paintings and sculptures. On the extreme right and left is built with latticed windows for royal ladies.

CHANDRAGIRI PALACE

The palace and fort was built by the Vijayanagara Nayak. In plan it is rectangular in design and the main gateway facing south (fig.6) The court hall have ceilings intersected by arches which are superimposed by domical structure. The face of the hall is decorated with sculptures and paintings.

GINJI COURT HALL

Nicholas Pimenta who visited Ginji in A.D. 1599 describes the nature of the court hall and throne of the Ginji Nayak Palace.[32] It gives a vivid picture about the seating positions and the richness of the king's ornaments. He says: "We found him lying on a silken carpet learning on two cushions in a silk garment, a great chain hanging from his neck, distinguished with many pearls and gemmes and over his breast, has long haire type with a knot on the crowns adorned with pearls. Some princes and Brahmanas attended him. There were also the bearers of the cauri and the camara. There was a room with pillars of carved stone and ivory".

The judicial system had been a well laid art on from sangam age. The kings exercised all executive, judicial and administrative powers and the delegation of power is unknown, and hence king is supreme authority. Therefore no distinct judicial body as such what we have today had been in rogue and in corollary to this fact there did not exist any chamber for judicial trial. However we can presume that from the plan of the present mahals like Thirumalai Nayak, might foreshadow the possible existence of a judicial chamber.

The court hall architectural history of Tamilnadu is multi faceted future. Its architectual designs and decorations have not yet been fully documented. The original character and style of judicial court halls of medieval Tamil country deserves to be fully documented and is comparable to northern and colonial tradition in general format. It needs further studies in this direction.

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CONCEPT OF JUSTICE AMONG THE TAMILS BASED UPON MYTHOLOGY AND ART

T. Chandra Kumar

INTRODUCTION

The main concern of dharma in life is that the virtuous should be protected and the wicked punished. Men evolve laws and rules to render justice to the righteous. The same law sometimes shields the criminals. Love of one's own self results in the exaltation of the self at the cost of justice to others. (Subrahmanyam 1990:48-63) Dharmasutras refer that the king should be the fountain of justice and Kautiliya's Arthasastra contain innumerable references to the laws and rules to be followed concerning polity, administrative and executive services, military, trade and commerce and so on. Asokan edicts point out the existence of Dharmamahamaatras" One who maintained law and order". Manusamhita or Manudharmasastram is a digest of laws and creeds rather than a planned code (Dowson 1989:201) which lays down rules concerning the code of conduct and customs which were in vogue. If the king did not inflict punishment, untiringly on evil doers, the stronger would roast the weaker, like fish upon a spit.. (Manudharmasastram VII 20) (Basham 1981:115) It further states that a king or a judge should study psychology of the contending parties. There was a strong notion that if the king swerve from the path of righteousness he would suffer hell (patalam, Manimekalai 9:20-23). The terrible description of hell, punishments entailing the crime moulded the whole society, including the king, and they feared even to commit clandestine crimes thinking that god (Lord Vishnu) is an embodiment of witness-consciousness, saksi (visnusahasranama. 15). In this line mythological lore play a dominent role in bringing peace, order and justice. Epical works like Ramayana and Mahabharata, puranas, sthalapuranas created once a reality and a history. In this paper an attempt has been made to highlight the concept of justice as found in puranas and out of abundant examples only a few has been selected. The concept of justice, despite highly unpalatable in form and nature as per modern standard, plays still a vital role among orthodox adherents and hence mythological notion of justice cannot be simply set aside as puerile and irrelevant to the modern values.

ASPECTS OF JUSTICE FROM LITERATURE

It is also essential to understand the notion of justice from the literature. Sanskrit and Tamil sources provide several examples regarding the concept. Taittiriyopanisad mentions about the lovers of justice as Dharmakamah who are able to judge impartially, and they are experience, independant, gentle and intent on the law. Such lovers of Dharma is

described as Dharmayupa or Dharmastambha "the Pillar of Virtue" and the kings are called in various terms like Dharmapala Dharamraja (Yama), Dharmavardhana, Dharmasavarna (11th Manu) Dharmaputra (Yudhisthira), etc.

In Tamil literature we get umpteen references to aram, a synonym of Niti and Dharma. Tirukkural (55:6) mentions that it is not the victories that given fame to the king but the acquittance of impartial judgement that bestow everlasting fame to him.

"Velanru verri taruvatu Mannavan

Kol atuvum kotatenin"

In the same implication, Madurai Marudan Ilanakanar admonishes the king, Ilavantikaipalli-tunciya Nanmaran that it is not the mere conquests that count merit to a king but his dispassionate justice that exalts the king in high esteem. Polity infused with uprightness, virtue and probity is the chief essential of governance (Pattupattu : 2-230 Porunairupatai). The kings issued orders for the maintenance of law and order at any time when the situation so demanded without any respite (CILAPPATIKARAM 16:150-4) The theft considered as a serious crime often punishable with death. The king was aided by learned Brahmins, who had well versed in the Dharmasastras, acted as legal adviser, a name akin to Pradvivaka. The study of Dharmasutras formed part of the curriculam to the students. Maduraikanchi (489-492) mentions that there was a class of lawyers or professional pleaders. There appears to have existed courts in the capital city of the kings which is denoted by the term Arankuravaiyam. Each villages had local tribuansl having features of the pancayats, and the nature and character of which is described by Tolkappiyar as Ettuvakai Nutaliya Avayam representing perhaps eight basic qualifications of a judge, such as education, family descent, good conduct, steadfastness and perseverance, truthfulness, fairmindedness, free and jealous and ambitions (Vellaivaranar 1950:33-34).

MYTHOLOGICAL CONCEPT OF JUSTICE

The concept of justice as found woven in the puranas is something unique and striking which has ethical and didactic values mingled with spiritualism and fancies. References to the notion of justice have a direct bearing upon steadfast devotion towards divinity. The god's interference in the unfoldment of truth is a common feature and such interference is not consistent always. Atonement or expiation of sin or crime is sought with severe penance, taking bath in holy tanks or rivers, ablation of the deity, chanting mantras and other methods of appeasement and glorification.

CASES OF AFFECTING MODESTY OF WOMEN

The Ramayana theme centers around the story of the abduction of Sita by Ravana, the demon-king of Lanka. Ravana forcibly stole her away to his capital without her consent. Similar is the case with Draupati who was disrobed by Duscatana in the court much to the amusement of Kauravas. The two examples provide cases of affecting the modesty of women. In the former example, Lord Visnu's vehicle Garuda as Jatayu interfers on the path of Ravana and in the latter Krsna protects Draupati by providing cloths to cover herself In both cases evil doers were punished by the affected parties ofter a disastrous war. The affected parties were never able to single out the criminals for their crimes obviously for punishment and the abettors were also punished. Rama killed the great monkey warrior, Vali by hiding himself behind the trees without any personal antagonism. It was an instance of deliberate killing of an innocent life, for which crime Rama is not punished. Several reasons for the liquidation of vali are adduced and they fall short of any reasoning. In Bhagavatapurana and Agnipurana one finds that Krsna takes away the clothes of the gopies swimming in a pond. On entreaty, he handed over the clothes to them. Such eveteasing tension has been altered in philosophical truism such as "all souls hanker after God to reach heaven or divine.

EXAMPLE OF TRUTHFULNESS

It is stated in Mahabharata (Vanaparvam) that the Dharmaputra, Bhima, Arjuna, Nakula and Sahadeva went in search of drinking water while staying in a forest. Dharma sent one by one to bring water and his four brothers died successively after drinking water near a pond. Dharma went in search of his brothers and to his shock he found them dead. He was grief-striken and a bodiless voice (acarin) from sky spoke categorically and asked Dharma to select any one of the four and assured revival of life only to one. Dharma preferred Nakula instead of the valiant Bhima and chivalrous Arjuna. The divine voice wondered why he had selected only one, for which Dharma replied: "Myself, Bhima and Arjuna are the sons of Kunti and Nakula and Sahadeva, sons of Madri, the second wife of Pandu. Since I am alive I can perpetuate the descent of Kunti and the selection of Nakula has been made for the perpetuation of progeny of the line of Madri".

Having heard the honesty and truthfulness of Dharma, the divine blessed for the revival of all.

CASE OF FALSE WITNESS

The episode of Annamalaiyar or Lingodbhava is found described in Sivamahapurana, Arunachalapuranam (II 1-88) and Skandapuranam (I.3). The myth explains Siva's fiery fire-pillar personality and the attempt of

Visnu and Brahma in finding out the top and bottom of Siva. Visnu as a boar digs down towards the bottom and Brahma as a swan flies to the top to find the crown. The myth deals about the failure of both these gods in such exploration. Brahma adopted a ruse to win the game and he claimed falsely of having discovered the top with the help of talampu (screw-pine or Pandanus Odoratissimus Linn., Ketaki in Skt) which was falling from the crown several millions of aeons ago and in this the deceitful Brahma and the flower which bore false witness were punished by Siva and in this Siva acts himself as a judge as well as a lie-detector.

LUST AND SEDUCTION

Devimahatmyam incorporated into the Markandeya purana (Section 82 and 83) states that Mahisasura 'the buffalo demon", the Lord of the demons tried to control the worlds and imprisoned 'recalcitrant gods'. From the anger of the gods born fierce Durga. Aided by the entire divine force-energy and lethal weapons, she rode on a springing lion, fought with the demons and killed the demon-lord. In the puranas like Devibhagavata, Devipurana and Vamanapurana the real explanation for the cause of the war is given as having direct implication to the lust of Mahisasura for the goddess, Parvati, the consort of Siva. The demon tried to seduce her. Vamanapurana mentions as Devi declaring "whoever conquers her in battle becomes her husband." She encourages his desire as a means of weakening him and she proposes to test his suitor simply to seduce him to fall in her trap. (Shulman 1980:179). Arunacolapuranam (section IV) states that during the severance of the head of the buffalo-demon, Devi happens to find to her wonder a linga in demon's neck and as per tradition and mythological practice, killing a devotee of Siva is a great sin and hence, she had to seek atonement. It is stated that she stroke the mountain with her sword and took a dip in the tank. Speaking from the modern system of judicial procedure, Mahisasura was killed primarily for his sexual appeal rather than for his imperialistic design which resulted in the eventual arrest of gods and confinment. Secondly Devi whose feigns herself stating certain conditions of her marriage, lures him to kill and this style can well be compared to a noted Tamil film Mantrikumari, based upon Tamil epic Kundalakesi, wherein we find a reversal of the episode. Here the prince lures his wife to kill her, but she understanding his evil design, liquidates him. In both the cases males falls victim. Thirdly the Tamil myth presents a "turning point" in introducing a novel feature which affects the melodrama. Devi seeks atonement for having killed Saiva devotee and atonment is no suitable answer to the modern standards.

In similar vein, Sivapurana and Kurmapurana mentions about the lust of Andhakasura, this time again upon Parvati. Andhaka means blindness (though he is no actually blind and he can move around with

his eyes) and blindness is metaphorically treated for his lust. Andhakasura tried to carry Parvati and he is destroyed by Siva. After his praise and repentence, Andhakasura was given a new life in the name of Bhringin. Here we find mere repentence is adequate to get divine bliss or saivahood.

SELF IMPOSED PUNISHMENT

Cilappatikaram (Valakkuraikatai) narrates the story of Kovalan and his wife Kannaki. Kovalan spent all his weath on the danseuse Madhavi and he returned bare-handed and he with his wife sought fortunes in Maturai. Kovalan who tried to sell the anklet of Kannaki was arrested on the ground that the anklet was stolen from the Pantiyan queen. Pantiyan Neduncheliyan without conducting proper enquiry and cross-examination hastily ordered to execute the accused. Kannaki came to the court and proved his innocence. The king then made a comparison with one of the anklets brought by Kannaki and found himself at stake. The king died of grief at his injustice. This story involves several legal points, for example,

1. He had taken into account one sided-version only.
2. He had not conducted any cross-examination.
3. He had not given opportunity for the defendant to argue his stand
4. Pleadings of the respondant fell deaf in his angry mood, obviously exhibiting the sensitive and moody nature of the king. Whimsicality has no place in judgement.
5. Failed to compare with the things or materials available.
6. Rhetoricism and sophism played a vital role. The goldsmith on whose words the king relied was captivated by parables, rhetoric expression, anecdotes, proverbs etc.,
7. The king gave importance to face value and first impression.
8. The king succumbed only to situational or circumstantial forces.

The atonement for Kovalan's execution is sought by the king in the extinction of his own self. Kannaki taunts him as Teramannan (Valakkuraikatai. 50) that is "one who lacks jurisprudential quality." Retaliative measure by the crown is unknown and today on jury would die of injury to justice.

GLORIFICATION OF ANIAMLS

Cilappatikaram mentions two episodes as narrated by Kannaki while arguing with the king. She demonstrates that she hailed from Puhar where the king Sibi ruled who saved the life of a dove at the expense of his own self, when the hawk, the predator tried to prey upon the bird and the place where the king Manuniti Chola ruled who killed his own

son on the demand of the cow for having accidently killed the calf underneath the wheel of the chariot while driving along the street.

The two examples show that justice was maintained irrespective of the species they belong, whether human or otherwise. The myth presents a clear evidence of how the Tamil treated all living beings alike without any distinction of lowliness and highness and the story appears to be an offshoot of the attempt of deification or apotheosisation of animals which was current among the Tamils. 'Strict quality before low' had been maintained and gross iniquities as we find to animals today, had not been levelled.

DIVINE INTERFERENCE

Tiruvilaiyatalpuranam (No. 25, 'Paliancina Patalam') presents how the interference of god is sought for a case which perplexed the king. It states that once a wife of a Brahim, while sleeping under the tree, died of a fall of an arrow from a tree which got entangled already amid the leaves and twigs. A hunter standing nearby with a bow and arrow was arrested on the charge, that he killed the woman. The hunter pleaded innocence. The king sought the help of the local deity. A divine voice instructed the king and the Brahim to attend the marriage of one Cetti. On reaching there the king and the Brahmin happen to hear the conversation of the servants of Yama, the God of Death, speaking about how to extract the soul of the healthy bridegroom which was ordered to be brought. For which one tells the story of the death of the Brahmin's wife. "Just as we took the soul of the women by making an arrow fall from the tree by blowing violent wind, we must try to make the bull (tied to the pole near) frighten by the loud noice of the drum-beating during the occasion". Likewise, when the drum was beaten to a loud noice, the bull frightened and ran toward the bridegroom and killed him. After having listened to all happenings, the king and the Brahmin came to realise the truth and the hunter was released. Here we can note how divine interference normalised the judicial tension. In the same manner, Siva comes to the court as dependant in order to redeem the property from unscrupulous persons. (Tiruvilaiyatalpuranam. "Mammanaka Vanter Satchi Sonna patalam" No.39)

INFANTICIDE AND DIVINE INTERFERENCE

In the popular folk ballad of Nallatankal katai, the divine interference is not solicited. Afflicted by poverty and the illtreatment of her sister-in-law, Muli, Nallatankal threw all her seven children into a well and lastly jumped herself. The crime of having committed suicide and infanticide was assuaged by the revival of life of the dead by Siva. In the Bhagavatapurana Kamsa massacres all children of his sister Devaki in the interest of his political consolidation and Krsna destroyed him eventually after a great many divinely powers.

CASE OF MATRICIDE

Parasurama, the son of sage Jamadagni and Renuka, (Mahabharata III:116) executed his mother on the order of his father because the sage doubted the moral lapse of his wife. Gratified by the obediency of his son, on the request of Parasurama, the sage restored the life back. Here the sage, because of his divinely power and quality, was able to revive the dead thus erased out the matricidal stigma.

CASE OF A TRIAL

Periapuranam (Tatatkondapuranam) recounts how Nambi Arurar (Cuntarar) became an ardent servant of Siva afer the melodramatic" arrest and absorption" Play. At the time of Arurar's marriage, Siva in the guise of an old Brahmin appeared and demanded his wedding to be stopped by claiming bridegroom as his slave. The Brahmin produced documents in his favour, signed by Arurar's grandfather and signed by a number of witnesses. In fury Arurar tore the documents as under. The judges asked the plaintiff to prove his claim by any one of the three methods which were in vogue.

1. Usage or customary evidence - atci
2. documentary evidence-avanam
3. the testimony of eye witnesses-ayalartam katci

The plaintiff explains his stand that the document destroyed by the defendant was only a copy and the original deed was still with him that he would produce it, if its safety was guaranteed by the court. The original deed was produced (Sastri 1975:474). Learned Brahmins scrutinized the document, a comparison of the handwriting was made with the extant documents preserved in the record - office, and found the claim of the plaintiff correct. In Cilappatikaram the Pantiyan ordered the execution of Kovalan without properly making comparison with the queen's anklet and in Periapuranam a proper trial was instituted. Thus there are cases of proper as well as hasty trials.

The judicial procedures present us the following legal matters. There existed a bench consisting of learned Brahmins as reeve. The disputants state their own cases and the emotion or certitude with which they present their pleas has its effect on the mind of the judges (Sastri 1975:475). There prevailed a system of the employment of comparison with other documents or material evidences. Material evidence was, however, tested in the murder of Kovalan, but not in proper time. The three basic requisites of evidences such as atci avanam and ayalartam katci were demanded. Regarding the question of justice, as per modern standard, a grandson cannot be enslaved simply on the basis of the acceptance of grandfather.

CASE OF GHOST-WRITING AND INTIMIDATION

Tiruvilaiyatalpuranam (No.52) describes in detail how Siva demonstrated his own finding that women bore natural fragrance in their hair. In this myth, Siva entrusted a poem written by him to Sundaranathan (Tarumi), a poor poet and asked him to read out amid the assembly of the poets in the court of the Pantiyan king. The purport of the verses explains that women bear natural fragrance in their hair, which was challenged as flase by Nakkirar, the chief of the poets. Tarumi blames siva for his having sent with his absurd finding and faulty Tamil. Siva in order to escape from the subterfuge threatens Nakkirar to accept his finding, otherwise his third eye be opened that may smash all. In these example, the ghost-writer is Siva, secondly the intimidation of 'Siva with a view to make Nakkirar into accepting his finding is a questionable one in the ambit of legal frame-work.

INFRACTION OF CONVENTION

Kantapuramam (VI) of Kacciyappa Sivacariyar mentions how Siva killed Daksâ who attempted to conduct a great sacrifice inviting all heavenly beings except Siva, knowing fully well that "he is the Lord of sacrificewithout whose participation, the sacrifice would become at naught". Parvati who came there to admonish his father was chided and banished from the site. In fury siva in the epiphany of Virabhadra destroyed the sacrifice and drove out thoseattended the sacrifice. In this myth Siva is not invited and he has not been given sacrificial portion which was conventional and customary as per mythological traditon. It is a clear evidence of the infraction of convention by Daksa which as in vogue. Secondly Virabhadra drives away the gods who came there to witness the sacrifices is an instance of divine violence.

CONCEPT OF BALANCE

In corollary to the mythological concept of justice, is also essential to note the concept of balance involving three types of balance,like common balance, cosmological balance and balance used for gifting materials equal to the weight of an individual (Tulapurusatanam). Tamil literature mentions about the balance as caman ceytu cirtukkum kol (Tirukkural 12;8) i.e., the one which treis to match two objects. Kambar's Ramayanam (Mantarai Cutchi patalam:19) mentions (cempon) tulai. Kalittokai (42:14-5) and Purannanuru (6:9-10) refers to them as Nerkol and Terikol respectively. Tamil inscriptions throw immense light upon the common balance used by the traders and the balance used for gifting precious materials equal to the weight of kings which was used for Talubhara ceremonies, obviously with an intent upon gaining bliss (arul) from the deity. A number of lithic carvings depicting the Tulabhara ceremonies is found on the ceilings of the mandapas built around the

mahamakam tank in Kumbhakonam. Sivamahapuranam refers to Tulapurusatanam explaining that the sinners should endow gift of his own wieght either in the form of gold ornaments or food stuff. In the myth of Sibi, who put his own flesh inone scale pan for the sake of the poor bird fall within the type of Tulapurasatanam

COSMOLOGICAL BALANCE

The dwarf-sage, Agastya is stated to have migrated from the north to south and developed the Tamil language and grammar. He is considered to be the patron-saint of Tamil. (Tiruvilaiyatalpuranam:54) and Kantapuranam (II-23 and 27) mentions that all gods and sages assembled to witness the wedding of Siva and Parvati on Kailasa. Hence the equilibrium of the world was seriously affected, the north sank down because of the wieght of those assembled there and the south rose up. Siva commanded Agastya to go to the south to counterwiegh the north, the sage being no bigger than a thumb, balanced north-south poles. Another instance may be cited from the myths. Sanskrit Skandapurana (VII.I.38) mentions in connections with the myth of Somanatha. The people venerated the Lord of Somanatha at Somanathapur, and attained bliss and found a place in heaven. At one time heaven there by was filled with entrants causing the hell to become empty and void and Yama had no work to do, the world's equilibrium was again affected hence Parvati created Ganapati to keep the votaries away from the shrine of Somanatha and thus a proper balance was restored.

ICONOGRAPHY OF DHARMASASTRA AND DHARMA

In art, concept of justice is personified in the manifestation known as Dharmadevatapurusa Sritatvanidhi (vol.I. section 4) a work of the 19th century A.D. refers to how the form of Dharmasastra and Dharma are to be sculpted in stone taking refers from Narsimhaprasada Hemadri's Danakandam and Dhyanaslokas. Sritatvanidhi (vol.I section Nos.25 and 26) presents that the colour of Dharma is white (svetavarunaha) and the Lord of all Dharmas (Adidevata) is Yama.

The from of Dharmasastra (Ibid. No.61) is delineated in the following verse.

"Dharmasastrum sitam santam kusasanam charuvaktram

Muktajapaksa dhrurka daksetu tulahastamtu vamatah.

"The colour of Dharmasastra is white. He has serene look and beautiful face. He is four armed. He wears all jewels and ornaments, dressed with white graments. He carries japamala made of pearls in right hand; balance in left hand."

The form of Dharma (Ibid.No.62) as found in the work is as follows:

Charuvaktras chaturbahu chatuspada sitambharah

Sarvabharanavan svetaha dharmakaryo vijanata

Daksinechaksa malasya tasya vametu pustakam

Varabhya yutah karyaha".

"Dharmadevatapurusa has four faces, four hands and four legs. He is white complexioned. He wears all jewels, and ornaments and white garments. He has japamala in (back) right hand and book (of Dharmasastra) in the (back) left hand. The front hands are held in abhaya (right) and varada (left) poses."

A relief-carving from a pillar of the mandapa in front of the tank in the temple of Tirugokarnesvara at Tirugokarnam near Pudukkottai presents that a figure representing the iconography of Dharma is available. The mandapa appears have been constructed during the Nayaka rule over the Pudukkotai region around 17th -18th centuries A.D. and hence the carving must belong to the same peirod.

On closer inspection, the figure is not in consonance with the textual descriptions as gtivne above, but some iconographical features taly well particularly in connection with the attributes and on the basis of the presence of the balance in the frount right hand and abhayamudra in corresponding Dharma. The aspect of Dharmasastra is infused in the icon of Dharma, since he holds the balance. He is not four-facedm, four armed and four legged as the text prescribes, but has five faces, ten armas and two legs only. The five-faced nature recall the Mahesa or Sadasiva aspect of Siva. The faces are sculpted in a row over the neck. Secondly, he holds the sankha (conch) and the cakra (wheel) in the rear arms, the favourite emblems of Vishnu. The second arms (from the front) possess the kamandala (waterjar) and book. the attributes of Brahma and as per the text,the book is also provided to Dharma. The attributes carved in the intermediary armas are not clearly discernible. He has kiritamakuta (diadem), haras (necklaces), keyuras (bracelets) and kankanas (wristlets).

SYMBOLISM OF THE ICONOGRAPHY

The merger of the nature and, character of the three important divinities marking the inclusion of emblems of Siva, Brahma and Vishnu in the iconography of Dharma is a noteworthy feature and the form appears to be an embodiment symbolising the divinely qualities like destruction, creation and preservation which are attributed to Dharma by the fanciful imagination of the aritists. The inclusion of the three basic qualities of the Gods appears to have had a philosophical connotation. It implies that if dharma is maintaned the whole world would be destroyed

and hence the spirit of dharma should be preserved in order to avert danger and cause good results. A proper balance of powers is possible in the event of preservation, and preservation involves punishing the evil forces and protecting the good. In this connection we must recall what Krsna says in Bhagavadgita IV: "I am born from age to age for the protection of the virtuous for the destruction of evildoers and for maintaining Dharma"

The book represents the Dharmasastras. The cakra symbolises the dharmacakra and Sankha, dharmasankha i.e. "The wheel of law and law-conch". Visnu is described as of the nature of dharma itself Vrsakapih (*Visnu-sahasranama*.V 101)

The representation of justice in art is a remarkable achievement of the artists, who excelled in carving out the balance.

CONCLUSION

To sum up, the whole gamut of puranic episodes provide a number of instances in connection with divine play in the twists of events, and hence the judgement is often amorphous in nature. At the same time the pedantic character of the sastras is strictly allowed to remain as it were, but sometimes much of the formalised doctrinies or conventions are infringed. The judicial tension is often avertd by sudden turn of events by making such uneasiness to get warmth and freshness by means of divine interference. The atonement for sin or crime is sought with prayers, penitential penance for several to thousands of years, fasting, begging, offering ablations, alms giving and having a dip in holy waters. Persons or gods of having equal status, power or valency are often pushed down to earth or cursed to be born in earth so as to undergo earthly tribulation and privation. Immoral and undisciplined are met with curse resutling into transmutation, such as to assume flora or fauna role or lithic conversion (Ahalya episode), and redemption or expiation of the sin is simultaneously given or delivered at the time of punishment. Persons of spotless character sometime get curse for no mistake of their own. For example Arjuna had to incur the curse of lipidinous Urvasi, when the latter made amorous appeal, Arjuna had to lose manhood but due to the interference of Indra, the efficacy of the curse was made to remain for one year only (Mahabharata" Virataparvam') such instances are also commonly to be found. Haughtiness, jealous, seductiveness and pride are the root causes of crmes and this is evident in the case of demons, who acquire the blessings, of Siva or Visnu and after that with the new faculty of power, they try to pervade their influence felt over the worlds. Blessings are munificently showered over a person if he satisfies a god by his austerities,

whomsover his intrinsic quality is, but in the end he meets with dismal end owing to his unalterable innate quality. Penance or learning sastras is not merely enough to make a person perfect, blissful and immaculte.

The concept of justice as adored or exemplified by the essence of puranas is translated into lithic carvings and the iconography of Dharma is a rare of its kind in the entire range of Indian art.

FOOT NOTES

1. A king or a judge should be a well-talented psychoanalyst in studying a person and be able to judge a person, firstly, from his voice, whether it is bold or evenly balanced or babbling, secondly from the movement of the lips, thirdly, whether he looks downcast, or casting his eyes downwardly or looking confidently, fourthly, whether he trembles or shivers by which he perspires profusely or not, fifthly whether he claps his hands or not, sixthly whether he is leering at this or that direction and seventhly to test whether he is chilled with fear and awestruck or not. Manudharmasastram VIII 25-26.
2. I am thankful to Mr.A.Chandra Bose, Research Scholar, Tamil Universtiy for having invited my attention tothis relif carving.
3. The architectural features of the pillars of the mandapa are in tune with Nayaka phase of 17th - 18th centuries A.D. The pillars have prancing leogryphs at the shaft Vyala-bracket at the capital. The corbles present a distinct puspapotika "flower-bud" motif.

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23 CONCEPT OF SOVEREIGNTY IN THIRUKKURAL

Dr.K.A. Rajaram

SOVEREIGNTY, an aspect of Jurisprudence, is a state in which a person or group of persons wield the supreme power in an independant political society. Austin, the celebrated authority on Jurisprudence has defined a sovereign as a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society.[1] A political society ruled by such an individual is said to be governed by the ideology of sovereignty.

The Pan Indian concept of sovereignty that the state consists of Seven limbs or essential elements (SAPTANGA) was described by Kautilya in Arthasastra. According to him, the king (Swami) the Ministry (Amatya), territory (Rastra), fortifications (Durga), treasury (Kosa), army (vala) and the allies (Sukrit) are the seven limbs or constituent elements of state[2]. Sovereignty is the bundh or total assemblage of the said ingredients.

Sukracharya says that the state is a tree of which the king is the root, the minister is the trunk, the offices are the branches, the armies are the leaves and flowers, the people are the fruits and the territory the seed.[3]

In Jurisprudence, State means and independent country.

PORUTPAL or the BODY-POLITIC, the second book of Thirukkural, the Magnum opus of the great poet Thiruvalluvar, consists of 70 Chapters. If these chapters 39 to 95 deal with Sovereignty.

Thiruvalluvar on the basis of the saptanga system of Sovereignty prescribes: "Army, territory, wealth, Minister, allies (friends), fort - he who has these six, is a lion among kings.

"படைகுடி. கூழ்அமைச்சு. நட்பு. அரண்ஆறும்
உடையான் அரச ருள் ஏறு[4]

This couplet owes its origin to Arthasastra.

The aims at a self-sufficient welfare state. The basis of his state is Dharma (Aram), which means Law, Equality and Morality.

THE KING, CHAPTERS 39 TO 63.

"The origin of kingship in Tamilakam was not very different from the origin of that Institution in other parts of the world"[5]. Monarchy was the rule of the day of Thiruvalluvar, who calls the king as IRAAI, IRAIVAN, KAVALAN, ARASAN, ARASU, MANNAR, MANNAVAN, MANNAN, VENDAN, VENDU, PURANDAR.[6] The characteristics enumerated by Thiruvalluvar are highly indispensable for a just king.

According to him, a great king owns six things - army, territory wealth, Minister, friends and fort.[7] Courage, liberty, wisdom, zeal (energy), vigilance, learning and bravery are his qualities. He is the custodian of Dharma or righteousness. He collects revenue and acquires wealth. He is accessible to every citizen and speaks pleasant words always. He listens patiently to the words that embitter his ears. He is munificent gracious, just and cares for his people.

The king is a fountain of justice. Maintenance of Law and order is his prime responsibility. He is the supreme law-giver and a dispenser of justice.

The Executive, Legislative and Judicial powers were with the king.

Justice comprising of good conduct litigation and punishment is referred to by Parimalazhakar, the commentator par excellence of Thirukkural, in his fascinating purface.

"அவற்றுள் அறமாவது மனு முதலிய நூல்களில் விதித்தன செய்தலும், விலக்கியன ஒழித்தலுமாம்; அஃது ஒழுக்கம், வழக்கு, தண்டம் என மூவகைப்படும்."[8]

The King should be very prompt in dispensing justice and it should not be either delayed or hurried, as justice hurried is justice burried.[9]

Salmond, the noted authority on Jurisprudence says:

"Society can exist only under the shelter of the State, and the law and justice of the state is a permanent and necessary condition of peace, order and civilization".[10]

Administration of Justice is dealt with in the following chapters of Thirukkural:- King - His glory *(இறைமாட்சி)*, Impartiality *(நடுவுநிலைமை)*, Just Rule *(செங்கோன்மை)*, Unjustrule *(கொடுங்கோன்மை)*, Absence of Terrorism *(வெருவந்த செய்யாமை)*, Considerateness *(கண்ணோட்டம்)*.

Salmond States : "The administration of justice by the state must be regarded as a permanent and essential of civilization, and as a device that admits of no substitute".[11]

According to Thiruvalluvar, the king who dispenses justice to his people and protects them will be looked upon as god.

"முறைசெய்து காப்பாற்றும் மன்னவன் மக்கட்கு
இறையென்று வைக்கப் படும்"[12]

Allen views : "The purpose of justice as a "Social virtue" is to maintain or to restore, and equilibrium in human affairs".[13]

Hart opines: "Justice is traditionally thought of as maintaining or restoring a balance or proportion".[14]

The golden rule on the administration of justice, formulated by Thiruvalluvar is:

"Deliberate well and lean not or either side; be impartial and consult with men of law; that is the way to administer justice".

"ஓர்ந்து கண்ணோடாது, இறைபுரிந்து யார்மாட்டும்
தேர்ந்து செய்வதே முறை"[15]

'ORNTHU' connotes due consideration to the facts of the case presented; 'THERNTHU' connotes judicial discretion.[16]

The king who does not dispuse justice after through enquiry, will fall.

"எண்பதத்தான் ஓராமுறை செய்யா மன்னவன்
தண்பதத்தான் தானே கெடும்".[17]

In Purananooru, it is said:

. . . . மாண்ட
அறநெறி முதற்றே அரசின் கொற்றம்
அதனால், நமரெனக் கோல் கோடாது
பிறர் எனக் குணம் கொல்லாது"[18]

Thiruvalluvar has fully recognised the importance of Judiciary. He is for deterrant and righteous punishment Horace mann holds: "The object of punishment is prevention from evil".[19]

Beccaria observes: The only justifiable purpose of punishing offenders is the protection of society by the prevention of crime."[20]

"கொலையிற் கொடியோரை வேந்துஒறுத்தல் பைங்கூழ்
களைகட் டதனோடு நேர்"[21]

Thiruvalluvar advocates capital punishment like Death Sentence for grave offences. The king punishing the criminal by execution is similar to protecting the crops by pulling up the weeds.

Parimelazhakar in his commentary to the above has pointed out the offences namely arson, poisoning, murder, theft, robbery, dacoity and lust for another man's wife.[22]

Kural rules :

"குடிபுறம் காத்துஓம்பிக் குற்றம் கடிதல்
வடுவன்று வேந்தன் தொழில்".[23]

"நாள்தோறும் நாடிமுறை செய்யா மன்னவன்
நாள்தோறும் நாடு கெடும்."[24]

"தக்காங்கு நாடித்தலைச் செல்லா வண்ணத்தால்
ஒத்தாங்கு ஒறுப்பது வேந்து"[25]

There are references on punishment for criminal offences like treachery, adultery in the other poems too.[26]

Thiruvalluvar's king is free from pride, anger and lust. He takes the friendship of wise men and avoids low company. He assesses the strength of enemies, knows the propitious time and suitable place for his acts. He trusts anyone after due investigation. He employs only loyal and faithful servants. He endears his kith and kin. He is free from forget fulness and procrastiuation. He is seldom sluggish. He is perseverent and undaunted by opposition and calomities. He is no autocrat.

Thus Valluvar's picture of the king is that of an ideal man. Soverignty will dwindle if he ignores Valluvar's directives.

THE MINISTER, CHAPTERS 64 TO 73.

The Minister is the eye of the KING.

"சூழ்வார் கண்ணாக ஒழுகலான் மன்னவன்
சூழ்வாரைச் சூழ்ந்து கொளல்"[27]

LASKI says: "The first quality of the Minister is common sense and the second one is his capacity to judge people".[28]

Thiruvalluvar's Minister has multifarious duties. He is barned. He discharges his duties diligently. He is firm in his convictions. He is steadfast, perseverent and matchful. He protects the people. He stands for Dharma. He speaks the truth always. He has eloquent speech. He is good at debates. He is prompt in actions. He consults experts, before taking decisions. He overcomes obstacles. Purity in action (வினைத்தூய்மை) and power in action (வினைத்திட்பம்) are his innate qualities.

OTHER LIMBS OF THE STATE & TERRITORY. CHAPTER 74

"The state must be in exclusive possession of a definite portion of earth's surface called territory. It includes not only land but also the adjacent sea if any and the superincumbent atmosphere. Both International Law and Constitutional Law take note of territorial states only." [29]

Thiruvalluvar's territory is healthy, fertile, pleasant, well-protected and wealthy. Only virtuous and righteous men live there.

FORTIFICATIONS, CHAPTER 75

The fortress is a combination of height, thickness, strength and unapproachability.

TREASURY, CHAPTER 76

Righteousness (அறம்), Bliss (காமம்) can be achieved only by those who earn white money in plenty. Escheats, revenue from customs and tributes paid by enemies belong to the king.

ARMY, CHAPTERS 77 AND 78

A dauntless and well disciplined army comprises of four units, chariot corps, elephant corps, cavalry and infautry. The army possesses valour honour, noble tradition and has the king's confidence.

ALLY, CHAPTERS FROM 79 TO 95

Thiruvalluvar praises true friendship and condemns false friendship. The king will be without allies if he does not posses the qualifications prescribed in chapter 39. Viz. The King - His Glory (இறைமாட்சி).

In Conclusion an analysis, it is observed that Thiruvalluvar was quite familiar with the Saptanga system and that sovereignty is the subtle combination of the Seven limbs or essentials of the State.

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DRAVIDIAN SCHOOL OF THOUGHT IN HINDU JURISPREDENCE

Dr.K.P. KRISHNA SHETTY

Hindu jurisprudence, unlike the western legal systems, laid stress on duties of individuals. The idea is that in a society of duty-conscious people rights of the individual could be exercised fully and without hindrance from any quarter. The ancient Rishis (thinkers) in India rightly felt that imperative need of the society is peace and harmony and that could be achieved if all sentient beings do not swerve from duty. So, the ancient jurists conceived a duty-oriented jurisprudence based on two cardinal principles, namely, Rita order and Dharma.

The Rishis deeply contemplated on the grand harmony found in the celestial sphere and came to the conclusion that Rita existed in nature and the strict observance of this Rita by the celestial bodies and by various phenomena in nature was the factor which perpetuated harmony in nature. So, they surmised that similar harmony could be established in the world inhabited by human beings if the people serupulously respected order (Rita) in human life, performing such of duties as they are capable of and as are enjoined by law. Life on earth was conceived as an integrated whole, which could be lived properly only in peace and harmony; peace and harmony could be maintained only by respecting Rita. People could be said to respect Rita only when they act in accordance with Dharma, that is, when they do their duties which nature and fundamental law enjoined on them. Aghamarsana, the great Vedic rishi expounded the concept of Rita and elevated it to the highest position in the scheme of the universe.[1]

It was conceived by him as the first and primal phenomenon in the natural scheme of the universe. According to Madhuchanda, even Gods,Mitra and Varuna, achieved their might by respecting and cherishing this Rita.[2] A similar statement is found in Samaveda also which says "Mitra andVaruna, through law, lovers and cherishers of law (Rita), have obtained their mighty power".[3]

The second important principle of the Hindu jurisprudence is Dharma. The word Dharma bears many connotations. As many as eleven implications and meanings have been listed by Dr.V.P.Varma.[4] Some of the important meanings listed therein are Rita, duty, universal law, justice, international or intertribal law and truth. Besides, the word Dharma, as explained by Dr. Varma, is derived from the word "Dhri", which means "to sustain or uphold".[5] If this etymological meaning of the word Dharma is read with the meaning ascribed to it, the word Dharma in its totality would mean "sustain or uphold" duty, Rita, universal law, justice, etc, Nowhere it has been used to mean or denote a right. Thus,

the ancient Rishis evolved a duty-oriented jurisprudence which was based on two concepts, namely, Rita and Dharma.[6]

In the post-puranic period, the Tamil seers and thinkers contributed a great deal to Hindu jurisprudence. Their erudition was so unparalleled, their understanding of the need for just law and thinking were so deep and their views on law and justice were so specific that their writings constituted a definite Dravidian School of Thought in Hindu Jurisprudence in this sub continent. The writings of the Tamil seers ramified over the jurisprudence and helped to evolve a code of higher principles of law, justice and duty.

CONCEPT OF JUSTICE AND EQUITY

The great Tamil sage, Thiruvalluvar, expounded the concept of justice and equity through the medium of sceptre, which is a symbol of sovereignty or imperial authority. According to him, "the right sceptre" denotes righteous laws, impartiality, justice and equity; whereas "the cruel sceptre" stands for unjust and oppressive laws, injustice and absence of equity.

Thiruvalluvar lays emphasis on the "righteous laws" and extolls their virtue thus:

"Where king, who righteous laws regards, the sceptre wields, There fall the showers, there rich abundance crowns the fields."[7] Further, he says that it is not the military might or the arms cache that bring real glory or victory to the rule "but sceptre swayed with equity."[8] What is more, Thiruvalluvar lays stress on the concept of justice. He says that where the King respects rights and administers justice with even hand and without any blemish is in turn protected by thelaw and the sense of justice inclucated in the realm through just administration of laws.[9]

The discernible principles in Thiruvalluvar's writings are justice, equity, righteous laws and equality and impartiality in the administration of justice. By his statement that just administration of laws and blemishless dispensation of justice protect the King, he subtly conveys the great principle that the King is not above law, he is under the law. Further, Thiruvalluvar's statement that the King,. who rules with partial hand, "sink and perish from the land"[10] connotes that the King is under God, whose wrath would befall on the unjust King. The king, therefore, has to administer justice with good conscience. The great concept of Thiruvalluvar that the King is under God and the law heard its echo much later in the statement of Lord Henry Bracton that "the King is under no man, but under God and the last, "which was quoted by Sir Edward Coke before the autocratic Stuart King, James I, in response to the latter's assertioin that it is treason to affirm that "i am to be under the law". [11]

Clear principles of Criminal justice can be found in the works of the ancient Tamil writers. As far as punishment of crime is concerned, a definite theory has been propounded by Thiruvalluvar. He says: "By punishment of death the cruel to restrain, Is as when farmer frees from weeds the tender grain".[12] In this passage one may discern two ideas. First is that death penalty is essential to restrain "the cruel". Secondly, it is a method by which the cruel element is weeded out from the society as the farmer removes the weeds from the paddy field. So, Thiruvalluvar propounded deterrent and exclusionary theory of punishment; Or, it may be described as exclusionary theory with a deterrent tint.

Another remarkable contribution of Thiruvalluvar to the juridical science is due process of law, which he calls"due degree" of investigation. According to him, the King should punish the accused after "investigation made in due degree."[13] Thiruvalluvar's concept of "due degree of investigation", which is equivalent to modern doctrine of due process of law, is a unique contribution to the realm of jurisprudence; and Thiruvalluvar is undoubtedly the original innovator or exponent of it, for the due process clause, as understood now, entered western legal system only in the year 1214 through the famous Magna Carta.

Further, Thiruvalluvar states: that in all cases prolonged enquires, that is, "for length of days," must be conducted with strictness; and when a person is proved guilty, he must be punished gently.[14] That is to say, the punishment has to be awarded with equanimity. In other words, the prolonged enquiries, not the hasty investigaitons, and awarding of punishment with equanimity, not in anger, are the procedural norms prescribed by him. The idea is that no innocent person should be subjected to punishment, muchless to cruel punishment. In this connection it is interest to note that he condemns excessive punishment. He says that "punishments beyond the right"[15] would destroy the "monarch's conquering might." [16] The phrase "monarch's conquering might" means the King's winsome visage, moral strength and unquestionable authority, which he acquired by righteous deeds and judicious acts, would be destroyed by such unjust act of imposing excessive punishment. So, the principle that let hundred guilty persons escape and but not an innocent person suffer, and the punishmen must be proportionate to the act of commission or omission are not really the modern concepts They are as old as Tirukkural.

The great legal principes laid down by Thiruvalluvar have been given definite emphasis in to historico-literary episodes. First is the Kannagi-Pandyan King confrontation episode, depicted in Silappadikaram, over the execution of Kovalan, Kannagi's husband, on the mere allegation that he had stolen Queen's gold anklet. According to

the story, porkollan, a goldsmith, was the culprit, who misappropriated the Queen's anklet sent to him for repair. In order to hide his crime, when Kovalan brought his wife's gold anklet, which resembled that of the Queen's, to the goldsmith for sale, the latter conspired against the former. The goldsmith, in the pretext of testing the anklet brought for sale, made Kovalan to wait and rushed to the palace. It was a time when the King was rushing to pacify the Queen, who was annoyed by the King's undue attention on a dancing dame during the dance session at the Court. The crafty goldsmith seized the opportunity to announce that he caught the thief, who had stolen the Queen's gold anklet, made him to stay at a place and brought the stolen gold anklet. On hearing the statement, that is, on mere information given by the wily goldsmith and without enquiry and without applying his mind, the King, who was supposed to be fountain of justice, issued instantaneous order to kill the thief and bring the anklet. The King's order was duly carried out.

Thereafter, when Kannagi came to know that her husband, Kovalan, was put to death for no fault of his, she with uncontrollable agony and rage rushed to the palace and bitterly complained to the King that he had done cruel injustice to an innocent person. King's reply was that it wasnot cruel to kill the thief and he rendered proper justice. During the confrontational semantics on justice between Kannagi and the Pandian King it was reavealed that the Queen's anklet contained pearls within, whereas Kannagi's anklet had rubies within. Whereupon the King summoned the anklet seized from Kovalan and gave it to Kannagi for verification. Then she threw the said anklet with all her might, which was further reinforced by her swelling righteous indignation at the cruel injustice done to her husband, on the floor of the Court. The anklet broke out into pieces and rubies splashed all over laying bare before the people the cruel injustice meted out by the King to the innocent man. The judicial conscience of the King was shocked and mortally shaken. He said that he brought disgrace to the throne (in this case the seat of justice) and to the sceptre by his hasty decision, and he was a thief and not a ruler. As recompense for his failure to safeguard the interest of his subjects, the King gave up his life and thereby straightened the sceptre and saved it from ignoring.

This historico-literary episode throws up some important principles. First and foremost principle is that "due degree investigation" and proper application of mind are sine qua non for just decision. Second; hasty decision is antithetic to proper discharge of judicial functions. Third, trial on information is reprehensible system. Finally, and above all, it estabilished concept of judicial accountability, which the modern jurists have not yet come to grip with.

The second episode related to the rendering of justice by Manuneethi

31 Cholan to the Cow, which complained to him with tear-filled eyes and in a language of gesture that its calf had been crushed and killed by his son while driving his chariot. Moved by the pathetic scene of the *gruesome killing of the calf, the King passed death sentence to the* accused and crushed him to death by driving the King's chariot over him. Though, the act of punishment in this case appears to be reprisal in nature and retributive in character, it has undoubtedly estabilished a glorious principle that however high in status and position a person may be law is *above him. Law is not respector of persons and justice must* be rendered with even hand and must reach all beings, including animals, without discrimination.

STATE AND THE GOVERNMENT

The great thinker, Thiruvalluvar, in his inimitable style explains the essentials of a State. he says that "land" is one where "unfailing fertility" (Prosperity) spreads, where virtuous men and wealthy merchants reside,[17] where calamites are rare,[18] and where fierce famine, wasting plague and savage of the foe are unknown.[19] Summing up his views, he says that a country's jewels are five and they are: unfailing health, fertility, joy, a sure defence and wealth.[20] Finally, he states that even if a State (Nadu) is blessed with all these essentials, that State gains nothing if it is "not with its king at peace" (that is, if there is no harmony between sovereign and the subjects.[21]

Thiruvalluvar expounded an excellent concept of State. Modern jurists made efforts to define "State". According to Oppenheim, four conditions must obtain for the existence of a State and they are: there must be (1) a people, an aggregate of individuals, (2) a country in which the people have settled down (a wandering people is not a State),(3) a Government *which governs according to the law of the land(an anarchistic* community is not a State) and (4) a soveriegn government.[22] Article 1 of Montevideo Convention of 1933 on the Rights and Duties of States enumerates four characteristics of a State, namely, (1) a permanent population, (2) a defined territory, (3) a Government, and (4) a capacity to enter into *relations with other States.*[23] *Long before the above definitions* of State Thiruvalluvar gave a comprehensive definition of State when he explained the essentials of a State. But, of course, he did not lay emphasis on one ingredient, namely, the territory or "defined territory".Fact of the matter, however, is that even today "a defined territoy" is not considered to be an essential characteristic of a State. Prof.Starke rightly pointed out that a "fixed territory" is not essential to the exisence of a state provided that there is an acceptable degree of "consisitency" in the nature of the territory in question and of its population.[24] So, omission to mention "fixed territory" as one of the essentials of a State *did not in any way affect the efficiency of Thiruvalluvar's concept of*

state. It is quite possible that Thiruvalluvar felt several centuries before that a "fixed territory" or "defined territory" was not essential to the existence of a State. What makes Thiruvalluvar a unique law formulator is his emphatic statement that even though all the essential characteristics mentioned by him exist in a polity, it may not be a State if it is not at peace with the King(Ruler), that is, if there is no harmony between the Ruler and his subjects. In this respect Oppenheim's statement that "an anarchistic community is not a State" alone comes nearer to Thiruvalluvar's conception.

Another great contribution of Thiruvalluvar lies in his prescription of qualities and qualification for the Ruler and Ministers who are entrusted with the duty of carrying on the functions of the Government. A good Ruler, according to Thiruvalluvar, is one, who possesses six things: an army, a people, wealth, ministers, friends and a fortress,[25] who is endowed with four qualities: courage, liberal hand, wisdom and energy,[26] and who is known for his three traits: "sleepless promptitude" (vigilance), knowledge and strong decision.[27] He says that it is the duty of the King (ruler) to spend the treasure he gains "for his Kingdom Weal", for the welfare of the people,[28] to guard the realm and maintain strict justice[29] and he must be easy of access to his subjects.[30] Further, he says that he is the right King (Ruler) who has four innate qualities: beneficence, benevolence, rectitude (right sceptre) and care of people's weal[31]. He also that since King's counsellors are actually "monarch's eyes", they must be chosen by him with great care.[32] In other words, they must be selected after due examination of their character and qualifications.

Then speaking about the qualities and qualifications of Minister, he says that a good Minister is one who with his wisdom makes an excellent choice of means, time, mode of work, and rare functions to be discharged by himself.[33] In addition to this, he must possess "guardian power" (protection of subjects), determined mind (firmness), learned wisdom and "manly effort" (perseverance).[34] An able Minister is one who comprehends the nature of an undertaking, executes it in the best manner possible and tenders advice after pondering deeply over the problem.[35] Though the Minister is highly learned and knowledgeable, he must be wise enough "to follow common sense of men in act."[36] What is more, it is the duty of the Minister to tender sound advice and "to say the very truth, though unwise King may cast his words away."[37]

It may be noted that by laying down the essential characteristics of State and by prescribing necessary qualities and qualifications for Rulers and Ministers, Thiruvalluvar was actually attempting to lay down rudiments of a good constitutional government. Remarkable feature in Valluvar's jurisprudential thought is his stress not only on the need for wise Rulers but also on the necessity of righteous laws. It is this

combination of wise Rulers and righteous laws that alone, as visualised by Thiruvalluvar, would ensure order and harmony in the society. Needless to say that order and harmony are not only the grammar of good government but also the pre-requisites for continuing development in the society.

As a matter of fact, two great Greek philosophers, Plato and Aristotle, tried to answer question: Is it more advantageous to be subject to the best man or the best laws? Plato opined that "law is like an obstinate and ignorant tyrant who will not allow anything to be done contrary to his appointment or any question to be asked". Inevitably he came to the conclusion that it was more advantageous to be subject to the best man. Such best man, according to him, was "Philosopher King", who should possess certain qualities and qualifications. Plato implicitly relied on the discretion of the "Philosopher King", whose pure wisdom, according to him, would render real justice by giving each man his due. But, Aristotle repudiated all-wise ruler of Plato. He said: He who bids man to rule adds an element of beast, for desire is a wild beast, and passion perverts the minds of the rulers, even when they are the best of men. According to Aristotle, the law is reason unaffected by desire. It is intelligence without passion-the accumulated wisdom of the ages. He obviously held the view that it would be advantageous to be subject to the best laws. Thus, the view of Plato and Aristotle revealed two different approaches to the problem of establishing a good government.

The drawback in the thesis of Plato and Aristotle lies in the fact that they treated the need for "the best man" and the necessity of "the best laws" as separate subjects and in isolation as if one has no connection with the other. Lack of integrated approach rendered their philosophics less acceptable. Fact of the matter is that it is not the good ruler (Philosopher King) alone, nor the best laws alone that could ensure a good government in a State. This axiomatic truth has been brought out clearly by Chief Justice Taney of the Supreme Court of the U.S. when he said that "all powers may be abused if placed in unworthy hands".[38] This was the reply given by the Chief Justice to an apprehension expressed before the Supreme Court that the power given to the President by the Constitution to re-establish the broken relations of the State with the Union by installing a new government in the State might be abused. The great thinker, as he was, Thiruvalluvar comprehended the axiomatic truth and, unlike Plato and Aristotle, adopted an integrated approach and came to the conclusion that both the law and the ruler must be good and just.

CONCLUSION

The Dravidian School of thought has made enormous contribution to the Hindu jurisprudence in such important matters as justice, equity and good conscience, criminal justice, due process of law (due degree investigation concept), essentials of a State, qualities and qualifications of ruler, etc., The Tamil scholars, who writings constituted the Dravidian School of thought, unlike the Vedic period thinkers, are more specific in their views and they distinctly formulated their concepts. Among the Tamil seers, Thiruvalluvar is a towering personality, whose Tirukkural is the corner stone of the Dravidian School of thought. He is a great Indian jurisconsult and a visionary too.

It is, however, strange that he has been portrayed as an "electric" philosepher.[39] That is to say, he is a philosopher who borrowed ideas from various sources and not exclusive in opinion. It is said that "Christian influences were at the time at work in the neighbourhood, and that many passages are strikingly Christian in their spirit, I cannot feel any hesitation in saying that the Christian Scriptures were among the sources from which the poet derived his inspiration".[40] It is highly inprobable. It is as improbable and far fetched as a statement if one hazards to make after finding some similarity between a few episodes in Ramayana and Iliad that either Valmiki borrowed ideas from Homer or Homer borrowed them from Valmiki. Therefore, it is not correct to say that Thiruvalluvar is an electric philosopher.

Another view is that Thiruvalluvar's work is didactic,[41] that is, the work having the manner of an authoritarian teacher. In short, it is a work meant to instruct. This seems to be a correct description of his work. Probably it is correct to say that Thiruvalluvar is an intuitionist philospher in the field of jurisprudence. It is said that "intuitionism holds that ethics is an autoromous discipline with its own peculiar subject matter" and, according to intuitionists, "the basic propositions of normative ethics are intuitive or self-evidence insights of a unique kind, which cannot be inferred from any other discipline."[42] The manner of writing and presentation of ideas and clear formulation of propositions of normative ethics touching important aspects of justice, law and constitution in Tirukkural would show that Thiruvalluvar's work in didactic in nature and he is a great intuitionist philosoper in the field of jurisprudence.

FOOTNOTES

1. Rigveda, X, 190, 1-3, stanzas quoted by R.Pal, The History of Law in the Vedic Age and in Post-Vedic Times Down to the Institute Man, p-1113.

2. Rigveda, 1,2,8, *stanzas quoted by* R. Pal, op-cit, p-114

3. Samaveda, IV, 23, 8-10, quoted by R. Pal, *op-cit*, p. 175.

4. Dr.V.P.Varma, *Studies in Hindu Political Thought and its* Metaphysical Foundations, 1959, p.106, footnote 1.

5. Ibid, p. 107.

6. For further elucidation on the subject see Krishna Shetty, K.P.,

   "The Constitution of India and Hindu Jurisprudence", Bulletin of the Institute of Traditional cultures, Madras, 1964, Part II, p. 197; and Krishna Shetty, K.P., Fundamental Rights and Socio *Economic Justice in the Indian Constitution*, 1969, at pp. 54-60.

7. *Tirukkural* (Tr.by Rev.Dr.G.K.Pope, Rev.W.H.Drew, Rev. John Lazarus and Mr.F.W. Ellis), Ch. 55, Verse 545.

8. *Tirukkural*, Op-cit, Ch. 55, *Verse* 546: "Not lance gives the kings the victory,

   But sceptre swayed with equity".

9. Refer Tirukkural, Op.Cit, Ch-55, Verse 547:

   "The King all the whole realm of earth protects; And justice guards the King who right respects." Also see Verse 548.

10. Refer (Tirukkural Ch. 55, Verse 548: "Hard of access, nought searching out, with partial hand The King who rules, shall sink and perish from the land"".

11. For this see Roscoe Pound, The Development of Constitutional Guarantees of Liberty, 2nd Edn., pp. 45-46.

12. Thirukkural, Ch. 55, Verse 550.

13. Tirukkural, Ch. 57 Verse 561.

14. *Ibid*, Verse 562.

15. Ibid, Verse 567

16. Id.

17. Tirukural, op. cit, Cd-74, Verse 731.

18. Ibid, Verse 732.

19. Ibid, Verse 734.

20. Ibid, Verse 738.

21. Ibid, Verse 740.

22. L. Oppenheim, International Law, Vol. I, 8th Edn., p. 118.

23. For this see J.G. Starke, Introduction to International Law, 10th Edn., p. 95.

24. Id.

25. Thirukkural, op. Cit, Ch.39, Verse 381.

26. Ibid, Verse 382.

27. Ibid, Verse 383.

28. Ibid, Verse 385.

29. Ibid, Verse 388.

30. Ibid, Verse 386.

31. Ibid, Verse 390.

32. Ibid; Ch.45, Verse 445.

33. Ibid, Ch.64, Verse 631.

34. Ibid, Verse 632.

35. Ibid, Verse 634.

36. Ibid, Verse 637.

37. Ibid, Verse 638.

38. Luther V. Borden, 7 How. 1

39. Tirukkural, op. cit, (Introduction) p. xxiii.

40. Id.

41. Ibid, p. xxi.

42. W.Friedmenn. Legal Theory, 1967, (5th Edn. pp. 27-28.

25 SYSTEM OF ELECTION IN ANCIENT TAMILNADU

V.P. Purushotham

ELECTIONS IN GREECE

We have evidence that some sort of Electoral system prevailed in the Sixth Century B.C. in places where democratic institutions existed. In the Greek City States, most public offices were filled by lot, but a few posts for which special qualifications were needed were filled by election - the very reversal of the present practice of appointment. Voting was often by show of hands in a public assembly, but secret ballot was exercised in special cases like ostracism. The ballot used were white and black pebbles, marked and unmarked shells or carved wooden tablets.

ELECTIONS IN NORTH INDIA

In parts of North India, before and during Buddha's time, (that is around 600 B.C.), republican forms of Government existed. Typical among them were the Lichchhavis having their capital at Vaisali, the Mallas with their capital at Kusinagara and Ambashthas of North-Western India. In these Republics elections were held for the Assembly which controlled the affairs of the Republic. The vote was called "Chhanda" (wish or will) and the Multi-coloured ballot papers used in the election were called "Shalakas".

The Returning officer was called "Shalaka Grahak" (Collector of ballot papers)

ELECTION IN CANKAM AGE

In the earlier phase of Cankam Age, before the emergence of Ceras, Colas and Pandyas as the "Three Great Kings" (Muvendar), there is reason to believe that democratic institutions prevailed among the various tribes that inhabited the Tamil land. Originally the Colas were divided into several clans. All these clans were collectively called in the plural form as Colar. The leader of the tribe was called the Great son of Colar. (Colar Perumagan). Only in the later phase of Cankam Age, we find two of the clans of Colar tribe the Killis and Cennis - gaining the importance and in militancy strength and establishing monarchies.

There are numerous references in Cankam literature about Assemblies which were called "Avai". These Assemblies held their sittings in the Great Common place or Hall (Avai Irunta Perum Pothiyil). A special form of the Assembly was the Judicial Assembly (Arankuru Avaiyam) which expounded the law and speedily redressed the grievances of the litigants.

Of all the judicial assemblies, the one at Uraiyur was singled out for special praise. Though situated in the Cola country, this Assembly probably acted as an International Court of Justice, expounding law and dispensing justice to all residents of Tamil Nadu irrespective of their tribe or nationality.

The Village assemblies held their sittings in "Manru" or Mautam, the common place, of the village probably under the banyan tree.

Members of these Assemblies were probably elected by ballot. Song 77 of Akananuru has the following lines:

கயிறு பிணிக் குழிசி ஓலை கொண்மார்

பொறிகண்டு அழிக்கும் ஆவண மாக்கள்

These lines mean: 'The document people inspected the seal on the pot bound by ropes and removed the seal to get the olai (from the pot).

Probably the olai (Palm leaf which was used as a paper for writing) here meant the ballot paper, the Pot the ballot box, and the document people functioned as Returning officers, These lines indicate that voting was by secret ballot and after voting was over, the ballot box was covered and tied with ropes and sealed. During the counting of votes, the Returning officers examined the seal on the ballot box as proof against tampering, then removed the seal and took the ballot papers from the box. This system of election mentioned incidentally in a love song in a couple of lines, sounds rather modern.

ELECTION UNDER PALLAVAS

Under the Pallavas, the village Assembly normally consisted of twenty elected members. The Village administration was divided between various Boards called 'Variyams' which looked after irrigation, justice etc.

ELECTION UNDER THE IMPERIAL COLAS

To the Imperial Colas India owed the most important and Succesful experiment in local administration made in ancient times. No doubt the Cola local government was an improvement upon the tradition handed down from the Cankam Age. Its unique feature was the village assembly which managed all local affairs. The members of the assembly were elected from among those who satisfied certain property and other qualifications. This body usually had its meeting in the temple courtyard. The assembly worked through number of committees (Variyams) such as finance and accounts committee, the taxation committee, the water supply and sanitation committee, the temple committee and the irrigation committee, The assembly also settled land dispute.

KUDAVOLAI SYSTEM OF ELECTION

Uttiramerur Inscriptions of 919 A.D. and 921 A.D. give a detailed description of the Electroal Process for the election of members of the village assemblies. The candidate aspiring for the membership of the Assembly should own a house in the village, possess a quarter veli of land, aged above 35 and below 70 and should be a learned person. Those who served in any committee (Variyam) for the past three years and those who had not submitted accounts while serving in the variams as well as those of questionable behaviour or having criminal records were disqualified from contesting the elections.

For the purpose of election, the village was divided into a number of wards, The number of wards in a village varied according to its population. Senthalai had sixty wards while Uttiramerur had 30.

An election officer was appointed. All the people in the village assembled at a common place on the election day. Nomination papers of the candidates were scrutinised and the names of the eligible candidates were written on palm leaves and put into a pot and shuffled. A young boy was asked to pick up as many palm leaves from pot as required for the wards. Each name on the selected palm leaf was read over and shown to everybody assembled.

This system of election was called Kudavolai system (Kudam means pot; olai is the plam leaf) and no doubt resembles partly the sealed - pot system of the Cankam Age.

DECLINE AND FAIL OF ELECTRORAL PROCESS

Even after the fall of the Imnperial Colas the Kudavolai system of election to the village assemblies continued under the Pandyas vide the Manur inscription. When the wings of Vijayanagar Empire spread over Tamilnadu, election to the village assemblies started vanishing and the village officers assumed heriditary status. Under the Nayaks, the edifice of village autonomy crumbled. The fiefs called Palayams were created by the Nayak rulers of Tamil Nadu and the Polygars usurped the power once wielded by village assemblies. The electroral process came to a close, only to be revived in the twentieth century.

ANCIENT AND MODERN ELECTIONS

It would be interesting to compare the present day elections in India with the elections held in ancient Tamil Nadu. The first difference that strikes us is that election in ancient times was a local affair and the electorate in each village (Ur) consisted of a few hundred - possible a thousand, voters. The question of impersonation and the necessity of issuing identity cards to the voters did not arise then. But now the

Indian electroate consists of 550 million voters and the elections are a centralised and complicated affair. Impersonation and casting of bogus votes are the order of the day and all political parties indulge in that. Therefore, the issue of identity cards is a must, if we want the elections to be fair.

Secondly, in ancient times only an honest and learned person, having some property in his village could contest the elections. People of questionable character and criminal activities were strictly excluded. I need not tell you that say Tom, Dick and Harry can contest any election, in India now. In fact, the Chief Election commissioner has said that as may as 284 M.L.As in the largest State of India have criminal records. What he desisted to say is that an ex-dacoit queen would be taking over as the Chief Minister of that State in the near future. It is high ttime that we imposed some porperty and educational qualificcations to our would-be legislators and scrutinised their past for any immoral, criminal or corrupt behaviour.

Thirdly, the ancient elections did not cost much. People assembled at a common place and cast their votes. A few booths probably one booth for each ward - would have been sufficient. But now, the elections cost a fortune - both for the Government and for the candidate. It is high time that the Government started funding the elections, levying an election cess.

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28 MUTILATION AS PUNISHMENT

Dr. Annie Thomas

INTRODUCTION

The word 'mutilate' means, 'to maim; to remove a material part of; to deform by slitting, boring, or removing a part' (Maim: a serious bodily injury; the lameless; the loss of any essential part).

Punishment is the act or method of punishing; the penalty imposed for an offence (20thC Dictionary, W & R. Chambers, London 1961).

As a punishment of a crime or some offence, a miscreant may be mutilated, crippled and rendered defective and disabled. Throughout the world, both killing and mutilation have come down through the centuries as punishments. Mutilation seems be a very old method of punishing the convict.

Punishments are given on three bases. The first one is to stop the reoccurrences of a crime and caution others from committing such crimes, by punishing the culprit. It is called detence. The second one is to make the criminal taste the result of his crime, it is called retributive. The third one has an aim to ccorrect the convict. It is reformative (See: A Concise Dictionary of Law, OUP, Oxford, 1990).

The first type, creates fear in others, and by that prevents them from committing crimes. Because of this intension, the accused is punished not as per the gravity of his crime, but to a higher degree, to inflict fear in the onlookers. Here the person who is punished is used as an instrument to convey a message / teach a lession to the society.

The Second type, has the philosophy that he who commits mistake should reap its effect. He must be paid back in the same coin. As an when the criminal experiences the result of his crime through punishment he will remember not to commit it again.

The reformative method tries to reform the accused by making him understand that his act not only troubles others but also spoils himself. Instead of punishing, through compassion and love, and regarding him as a psychic patient and not a criminal, he is treated in a humane manner. In the third type, such punishments as killing and maiming are avoided.

Mutilation falls as a punishment under the first two categories. Maiming leads to a permanent deformity and, if of the limbs, will be conspicuous and unerased. It will be a constant caution to the convict as well as the onlooker. It injures the conscience of the convict to such an extent as not to repeat the crime.

Mutilation can happen as an accident, as medical treatment (amputation), during war or given as punishment to the acquitted. By taking law into their own hands, persons may maim another, and that becomes a crime.

To the one who maims another, mutilation can be given as a punishment. Thus maiming will occupy the place of both crime and punishment. This was seemingly the law of the Jews, regarding acts of violence. The Bible says this as follows:

'...And if any mischief follow, then thou shalt

give life for life, eye for eye, tooth for tooth,

hand for hand, foot for foot, burning for

burning, wound for wound, stripe for stripe (Ex. 21.23-25).

Such clear views on the types of punishments, or the situation where mutilation is given as punishment, are not found in the span of Tamil Writings, from Tolkappiyam to the 15thC AD. But various reforms, here and there in Tamil literature give ample corpus to study its place in the life and lore of the Tamils.

One may come across two categories of persons involved in such action. One group maim themselves as self-punishment; Another group inflict it on others.

When is mutilation given as a punishment; i.e., for what crimes maiming comes as punishment? who is the law giver who has fixed this as a punishment? who lays down the judgement to apply such sentences? Is mensrea taken into account before coming to such conclusions? Who executed the punishment? All such questions do not get clear answers in the available data. Even then, the fact that the Tamils also executed mutilation as punishment is proved. Did they consider it as "inhuman and degrading" is not very clear. In most occasions it is immediate and no second tought seems to be given. There was no room for appeal, or even if appealed there was no reconsideration. The professed sentence was executed. There seems to be no specific norms on which the punishments were fixed.

Cutting the limbs, like hand or leg; splitting the tongue; piercing the ear drum; scoopping the eyes; plucking the nose, ears, lips or breast, etc., are seen in available corpus. In one or two very rare occurrences, divine interception has made whole-back to normal-the mutilated organ.

TOLKAPPIYAM

Tolkappiyam, in Meyppattiyal, the section on bodily expression of emotions, gives the term 'urupparai' meaning "maiming of organ"

(uruppu=organ; aru-to cut). It is not given as a punishment but as the cause of anger.

In a fit of anger, one may mutilate another; Being maimed by an attacker, the attacked may express rage. Both these are possible. In these, as law is taken into ones own hand, these can be taken as crime and not as imposed punishment can be taken as crime and not as imposed punishment. (In a *Cankam poem, cutting off* the udder of the cow is given as a crime-Puram. 34).

CANKAM LITERATURE

In a Puram verse by Enicceri Mutamociyar, (verse 132) punishments like spliting the tongue and making the ear, deaf are recorded. The poet elucidates these as *self punishments as he has not primarily* taken into consideration, the king Ayantiran.

Lo,

I remembered him later

Whom I should have regarded earlier;

Let

my heart sink down (into oblivion)

My tongue get split

My ears fill up

like the useless (dry) well

in the hamlet...

Piercing the palm and the tongue are also mentioned *in another* poem, as an expression of the heavy loss, due to the demise of a benevolent hero, Athiyaman. The verse is by Avvaiyar (Puram. 238)

The spear that pierced his chest

Made a hole in the (begging) bowls of the rare bards Pierced the palms of the needy

And hit the tongue of *the well versed poets*

making them to faint

These two may be taken as *figurative* expressions of what had been in vogue in those days.

The story of Tirumavunni shows her plucking off one of her breasts, may be as a mark of objection or as a form of inflicting self punishments, when she was harassed by an unfamiliar man (Nar:216). The incident

in Cilappatikaram which shows Kannaki plucking off her left breast (21.43) and announcing that she is unguilty, can also be taken as a mark of objection.

With fury I distroy this great city

That has beguiled my husband;

I have no guilt;

(So saying)

With her hand she plucked

Her left breast.

Such self implemented maiming, in a very strict sense, may not be considered as punishment also. But it is interesting seen to have been in vogue both in Cankam age and epic days.

One may come across one more incident in the Cankam poems regarding mutilation as punishment. It gives the practice such a cruel punishment, is not to be considered as right. The cow of a farmer wanders into the ripening field of green-gram of the Kosar tribe. The angered Kosar, caught hold of the owner of the cow and arrogating the power of law, plucked out his eyes (Akam.262). So, for the crime(?) or mistake unknowingly committed by an animal, the owner, though an old man, is punished. This shows that there was the possibility of one being punished cruely on the crimes of another. This cruel action, being a crime in itself, was revenged by Anniminili the daughter of the old farmer, with the help of Titiyan, a tribal hero, she kills the Kosar and gives vent to her anger.

................Anniminili

Angered, by the wrong, done to her father

- The ruining of his eyes' beauty

Avenges by killing the unequaled Kosar

Assisted by the hero, Titiyan of Aluntai - (Akam 196)

The innocent being punished by the authority is seen here. It is knowingly done here. It is unknowingly done else where. Muttollayiram gives a simili as follows:

The well cultivated field of black-gram

Grazed by the wandering calf

Got the donkey punished

Its ears cut off ... (60)

29 The purpose of law, to protect the innocent and punish only the culprit is violated here.

POST - CANKAM

The Kilkkanakku works, 18 in number, mostly deal with ethical principals and help one in understanding the morals and mores of a time and people. One verse in Nalatiyar denotes mutilation of the limbs- the leg, if one covets the wife of another and is caught red handed.

If seen, it is a blemish to the family

If caught red handed, the leg will be mutilated... (84)

The episode of Porkaippantiyan, who cut off the hand that tapped the door of a house and caused commotion, is cited as an example in Palamoli. Here, the king, who is the accused is also the witness of the (wrong) deed.

It is not fit for me, so

considering himself to be his witness, And

Thinking about his *mistake,*

Tennavan (The Pandya king)

Multilated his own hand ... (102)

THE EPICS

The vast field and varied corpus of the epics allow much insight into the realms of the legal world.

The heroine Kannaki, of the epic, Ċilapatikaram, plucking her breast, and the *king Porkaïp pantiyan, cutting off his hand, have reference* in the epic. These are already referred in the paper. One line, viz 'Cevic Cuttani' (23.49) (=nail that burns the ear) that comes in the episode narrating the story of the above Pandya king (23.42-53), helps one in understanding that, an iron nail was used to deafen the ear, when it was executed as a punishment (Further, the mutilated limb being replaced by a golden hand is also seen here). Punishing the particular part of the body that committed the mistake is seen here. It is unique. It comes in unison with the primitive law, viz, 'eye for eye, tooth for tooth'.

The Kamparamayanam narrates two incidents in the life of Lakshmana, where he executes punishment by maiming the organs of two demonic Ladies. Ayomuki, entyced by the beauty of Lakshmana, catches him and tries to carry him off. Imprisoned in her clutches, Lakshmana cuts off her nose and ears, and she bleeding and howling, runs away, leaving him. When Curpanakai tries to lift off Seethai, Lakshmanan, who was on guard, threatens and shoos her off by cutting

off her nose, ears, lips and breasts. These punishments seem very inhuman (Kampan 2825; 3631-32).

It is not right on the part of royalty to maim or punish in any-way the messenger or ambassador of an enemy king. When Anuman comes bound into the court Rama, and so Vibishana stops Ravana from executing his order to ampute the tail of the monkey messenger.

In Periyapuranam, in the stories of Chandeswara Nayanar, Kalikkamban, Kalarcinkar and Ceruttunaiyar, cutting off the organs as punishment, find a prominent place.

Candeswaranayanar, mutilated the leg of his own father, because with that leg, he had kicked the pot of milk, the young devotee had kept for anointing the Sivalinga (Cand. 51-52)

Kalikamban, engaged in washing the feet of a devotee, suddenly sees that his wife has stopped pouring the water. For him, it was a great crime and so he cuts off the hand that didn't pour water (Kalik 8).

In the stories of Ceruttunaiyar and Kalarcinka nayanar, the queen is punished by mutilation as she smells the flowers kept for god. Because she smelt the flower, ceruttunaiyar cuts off her nose; when the king heard about it, he felt that it would be more correct to cut the hand that took the flower, and so cut her hand; And she is doubly punished for a very innocent act (Cerut.5; Kalar-10).

This can be compared with Lakshmana's act of cutting the organs of Ayomuki and Curpankai. There, the miscreants were punished by cutting the organs; Here the organ that did the mistake was punished.

MINOR LITERATURE

Continuation of multilation as punishment can be seen in the minor literatures also. One example could be shown in 'Nontinatakam' which centres around the man, with no principles, who spoils his life in the hands of prostitutes, becomes bankrupt and for a way of life turns thief and is punished by cutting a hand and a leg. In the end when he realises his mistakes, because of Divine intervention he is again made whole. Citakkati Nonti Natakam is a good example to be cited here.

CONCLUSION

The Tamils had also taken to mutilation as a punishment. In most references, the wrath of a person had caused maiming of another person. So in certain incidents, it could be seen both in the vein of crime and punishment. Mutilation is seen as self punishment and also punishing another. Almost all parts of the body, most of the sense organs, seem

 to be maimed in one incident or another. Most of these punishments are given immediately; not after proper investigation, judgement and sentence. There is no exact one to one correspondence between the crime and mutilation as punishment. Even simple, innocent acts had caused severe mutilation as punishment. A fulfledged study of the whole corpus of Tamil Literature may reveal study of the whole corpus of Tamil Literature may reveal more similar or varied incidents of mutilation as punishment.

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